

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Exclusive Service Contracts)	MB Docket No. 07-51
for Provision of Video Services)	
in Multiple Dwelling Units)	
and Other Real Estate Developments)	
)	

COMMENTS OF VERIZON¹ ON EXCLUSIVE ACCESS CONTRACTS

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SUMMARY AND INTRODUCTION

Video competition is in a critical phase, with new entry by fiber-based providers creating the first opportunity for widespread, wireline competition in the industry. Under the unique circumstances present in the video marketplace, exclusive access agreements can threaten this competitive development, deprive consumers of the benefits of competitive choice, and inhibit deployment of advanced broadband networks in multiple dwelling unit properties (“MDUs”) and other private real estate developments. The Commission, therefore, should adopt a narrowly tailored rule prohibiting video providers from entering into or enforcing such agreements for a limited period of time until wireline video competition is given a chance to firmly take hold.

In many contexts, exclusive commercial contracts may have a procompetitive effect, allowing product differentiation, effective marketing and distribution, or other similar efficiencies. The video market is unique, however, due both to the legacy of exclusive franchises in many areas and to the fact that wireline video competition is for the first time beginning to take hold in many parts of the country. In this environment, exclusive access agreements are analogous to exclusive franchises that have long been barred, as they completely deny new entrants the ability to offer service to the residents of MDUs or other properties that are subject to such agreements.

Moreover, these concerns are not hypothetical. The record evidence amply supports the conclusion that exclusive access contracts have been used by incumbents to frustrate competitive entry and deny consumers the benefits of competitive options. Although such agreements often are withheld from competitors because MDU owners are unable or unwilling to disclose their existence, the evidence that is available shows that incumbent providers have entered into exclusive access contracts in regions around the country. Furthermore, many of these agreements have been entered into recently – indicating that incumbent providers are resorting to

exclusive access agreements as a means of “locking up” large apartment and condominium properties immediately prior to the entry of a new competitor.

These agreements can harm consumers. Given the fact that many of these agreements extend for 10 years or longer – some are even perpetual – large numbers of consumers may be deprived for years of the benefits of meaningful choice in video providers. Instead, they may be locked into cable service plans put in place well before there was a wireline competitive alternative. As a result, consumers are being deprived of the opportunity to take advantage of new technologies such as fiber optic service and interactive video. Furthermore, these agreements may make it even more difficult for new providers to enter the market and compete successfully – particularly in areas with a high concentration of properties subject to exclusive access agreements – and will deter competing providers from deploying advanced networks and services to these areas to begin with.

In light of these concerns and to encourage video competition and broadband deployment at this critical time, it is appropriate for the Commission to adopt a narrowly tailored and time-limited remedy addressing the competition-hindering effects of these agreements. A rule prohibiting providers from entering into new exclusive access agreements – or enforcing existing ones – for a period of five years, dating either from the time the rule goes into effect or, for providers obtaining a franchise after the rule goes into effect, from the most recent entry of a new franchisee into a franchise area, will ensure that incumbent providers do not use exclusive access agreements as a means of eliminating competition from new entrants. The rule should then sunset unless the Commission, based upon an analysis of then-existing conditions in the

marketplace, determines that an extension is necessary.² This is similar to the sunset approach that Congress adopted for programming access regulation. The Commission has ample authority to adopt such a rule here under Section 628, and doing so is consistent with the Commission's mandate under Section 706 to encourage video competition and broadband deployment.

DISCUSSION

As the Commission's Notice recognizes, much has changed since the last time the Commission visited this issue.³ Verizon and other providers are investing massively to offer consumers a meaningful alternative – often for the first time – to the cable incumbents, using next-generation fiber networks and advanced technologies that offer superior capabilities to traditional cable. The evidence that is available shows that cable incumbents have countered this competitive threat in many instances by entering into exclusive access contracts that shield incumbent providers from competition. Under the unique circumstances in the video marketplace, the Commission should adopt a narrowly tailored rule to ensure that consumers in MDUs and other private real estate developments are not denied the benefits of competitive choice during the period that competition is becoming established.

I. Exclusive Access Agreements at this Critical Junction Threaten to Deprive Many Consumers of the Benefits of Competitive Choice

Fifteen years ago, Congress recognized that “consumers . . . benefit greatly from the existence of two competing cable systems operating in a given market.” H.R. Rep. No. 102-628,

² As explained in more detail below, the prohibition on entering into or enforcing exclusive access agreements would remain in effect at the local level until five years have elapsed following the most recent entry of a new provider, even if that period extends beyond the five-year sunset of the rule.

³ At that time, the Commission concluded that there was limited evidence regarding “the extent to which exclusive contracts have been utilized, and . . . [whether] such contracts have thwarted alternative providers' entrance into the MDU market.” First Order on Reconsideration and Second Report and Order, *Telecommunications Services, Inside Wiring; Cable Television Consumer Protection and Competition Act of 1992*, 18 FCC Rcd 1342, 1369 ¶ 69 (2003).

at 46 (1992). In furtherance of this goal, it prohibited the awarding of exclusive and de facto exclusive cable franchises. *See* Cable Television Consumer Protection and Competitive Act of 1992, Pub. L. No. 102-385, § 7(a)(1), 160 Stat. 1460, 1483 (1992). It did so because it recognized the danger posed by exclusive franchises: Exclusive franchises threatened to stifle meaningful competition. For this reason, the Commission decided that it was appropriate to take action at the federal level to prohibit such arrangements.

Now that wireline competition for video services is finally beginning to emerge, the persistence of exclusive access agreements poses a danger similar to that posed by exclusive franchises more than a decade ago. In fact, given their long-term nature, many of these agreements are a legacy of the exclusive franchise era and serve to extend the influence of incumbent cable operators from that monopoly era. Furthermore, exclusive access agreements have the same effect as exclusive franchises, albeit on a smaller scale: They deny residents the ability to choose among competing providers. As the Commission recognized when it first considered this issue, exclusive access agreements may “‘lock up’ properties, preventing consumers from receiving the benefits of a newly competitive market.” Report and Order and Second Further Notice of Proposed Rulemaking, *Telecommunications Services, Inside Wiring Cable Television Consumer Protection and Competition Act of 1992*, 13 FCC Rcd 3659, 3754 ¶ 203 (1997). Once a property owner or manager signs an exclusive access agreement, residents are prevented from choosing alternative services that they might prefer – on the basis of price, quality, and innovative and technologically advanced service offerings.

This is a critical time in the marketplace for video services. New providers are entering markets across the country offering new products and services, utilizing next-generation technologies. For example, Verizon’s FiOS service now provides video, broadband Internet

access, and telephone service to consumers in hundreds of communities in parts of sixteen states over Verizon's fiber-to-the premises (FTTP) network. Verizon has invested billions in deploying its FiOS network, which passed more than six million premises by the end of 2006 and is projected to pass nine million by the end of 2007. Verizon's FiOS television service – an advanced video service offered over its FTTP network that offers superior bandwidth and speed capabilities – had 348,000 subscribers by the end of March 2007, approximately 40% of whom had signed up within the previous three months.

As a result of these efforts – as well as the efforts of other new entrants – many incumbent cable providers are facing wireline competition for the first time, and many consumers now have the opportunity to choose among competing providers. There can be no real dispute that this increased competition benefits consumers: As the Commission has recently found, consumers in areas in which two or more providers compete pay, on average, 17% less for video service. *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Cable, Cable Programming Service, and Equipment*, 21 FCC Rcd 15087, ¶ 3 (2006). Verizon's experiences in communities across the country are consistent with this national trend: For instance, after Verizon obtained a franchise in Manatee County, Florida and entered into discussions to obtain a franchise in nearby Sarasota County, Comcast announced that it would not raise cable rates in those counties for the first time in a decade. *See Lauren Mayk, A Cable TV Rate Shocker: No Boost*, Sarasota Herald-Tribune, Apr. 26, 2006, at A1. And according to the American Consumer Institute, consumers in Keller, Plano, and Lewisville, Texas – communities that had enjoyed meaningful competition for only six months – “saved, on average, \$26.83 per month off

their average cable TV bill, as a result of competition.” *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas* at 7 (Mar. 2, 2006).

Yet as welcome as this increased competition is, it is still in its early stages, as most consumers still do not have a meaningful choice among wireline video providers. That is why it is critical that the Commission act now to ensure that exclusive access contracts do not undermine the Commission’s procompetitive video and broadband policies. New entrants such as Verizon have shown that they have the ability and the resources to compete with incumbent providers – provided that competition is given a chance. But if incumbent providers are able to “lock up” significant numbers of properties using exclusive access contracts, then new entrants may be forced to reassess their plans to compete in certain areas or provide service to certain customers. More than one-quarter of households (and 40% of minority households) are located in MDUs with 50 or more residents. *See* Letter from David Honig, Executive Director, Minority Media & Telecommunications Council to the Honorable Kevin J. Martin, MB Docket No. 05-311 (Sept. 28, 2006) (citing *American Housing Survey for the United States* (2005), Table 2-25, at 106). Exclusive access agreements threaten to deprive significant portions of this segment of the population of many of the benefits of emergent competition.

While in many contexts, exclusive commercial contracts may have positive effects and can result in lower rates, differentiated service, more efficient distribution, and/or more effective marketing, this is not the case now with respect to exclusive access agreements for video services. Where an exclusive contract forecloses even the *possibility* of competition, the effect may be the opposite. And because they deny physical access to competing providers, exclusive access agreements are more likely to harm than benefit consumers. Indeed, the only type of arrangement that presents the same risks as those presented by widespread use of exclusive

access agreements in the absence of competition is the exclusive franchise, which the Commission has long recognized to be fundamentally anticompetitive. The threat posed by such exclusive access agreements, like that posed by exclusive franchises, is sufficiently serious to warrant narrowly tailored intervention by the Commission.

Were competition among providers in the market for service more widespread, then there would be no need for the Commission to take action. For instance, in the case of exclusive arrangements between providers of Internet services or applications and providers of broadband Internet access services, there is both actual and potential competition among providers using different platforms, and any exclusivity agreements negotiated in the face of this competition are likely to result in benefits to consumers by permitting differentiated service offerings or additional sources of revenue to pay for network upgrades. Similarly, if the effect of such agreements were not so pronounced – that is, if they did not allow incumbent providers to effectively exclude competitors from certain properties, and, by extension, markets – then there would similarly be no justification for Commission action.⁴ But given the unique danger presented by such agreements at the present stage of video competition, it is appropriate for the Commission to adopt a limited, narrowly tailored remedy designed to ensure that such agreements do not stifle meaningful competition for video providers.

Furthermore, the anticompetitive effect of exclusive access contracts is not limited to video. New video entrants often provide multiple services, including video, high-speed Internet access, and telephone service. In such cases, the economic case for deployment of those broadband facilities frequently depends on the ability to offer a full range of services to

⁴ For example, exclusive *marketing* arrangements – where the property owner might promote a particular provider – are pro-competitive and would not implicate the same concerns as exclusive *access* arrangements. Competitive providers would remain free to promote their services and attract residents with superior product offerings.

customers. As a result, exclusive video access arrangements threaten to deprive residents of affected properties of all of the benefits of increased competition in all of these areas, not just in video, because deployment may not take place to serve such properties. Residents of these properties may well miss out on the many benefits of new technologies and greater competition in broadband and innovative voice services as well as video competition.

II. Exclusive Access Agreements Are Widespread

This concern is not hypothetical. Verizon's experience has demonstrated that incumbent providers use exclusive access agreements as a means of locking out potential competitors.

Verizon's efforts to develop a full record on the extent to which these agreements are employed have been frustrated by the fact that many building owners are not aware that they (or a previous owner of the property) may have previously entered into an exclusive access agreement for their buildings, or are unable or unwilling to disclose the existence of an exclusive access agreement to a competing provider. Indeed, in some cases, as the *San Francisco Chronicle* has reported, cable providers have attempted to conceal the fact that a standard renewal form contained an exclusive access agreement from a property manager. *See Comcast Throws a Curve in Its Broadband Pitch*, *San Francisco Chronicle*, July 19, 2006, at C1 [Attachment 1]. Given that many property owners may not have sufficient funds to retain counsel to review these agreements, such tactics are likely to succeed. And in other cases, the agreement may have been entered into by a party that had no long-term interest in seeing that residents were provided with quality service. According to Manatee County, Florida, "it is often a developer who strikes an agreement that will not impact that developer once the development is completed."

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television and Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, Comments of Manatee County at 12 (filed Jan. 3, 2006) ("*Manatee County*

Comments”).⁵ In such cases, current property owners may not even know that their property is subject to an exclusive access contract. Finally, in many other cases, owners are unable (due to confidentiality provisions in their existing agreements) or unwilling to disclose that their property is subject to an exclusive access agreement. Therefore, providers that are unable to gain access to a particular property may never know for sure whether this was the result of an exclusive access agreement.

Notwithstanding the inherent difficulties in obtaining reliable information on the prevalence of these agreements, Verizon’s experience has shown that exclusive access agreements are used by incumbent cable companies to forestall competition. On several occasions, customers of incumbent cable providers have signed up for Verizon’s FiOS television service, only to be told by their building manager that they were prohibited from switching due to an exclusive access agreement. For example, one property in Florida that had been wired with FiOS informed its residents: “As much as we would like you to be able to take advantage of [Verizon’s] great offer it is with regret that cable television is not available to our residents from Verizon at this time.” *See* Attachment 2. This notice explained the reason for residents’ lack of video choice as follows:

When the property was built the original builder signed a 10 year contract with Bright House Networks. Until this agreement expires Bright House has the exclusive right to supply cable television. Meaning no other company may install cable television on this property.

Id. In another recent example, a condominium association in Bradenton, Florida likewise informed residents: “It has been brought to our attention that individual owners have purchased

⁵ Indeed, in many cases, a developer will enter into an exclusive access agreement with an incumbent provider and immediately sell the property to a new owner, who is then bound by the developer’s commitment.

packages from Verizon that *include cable television*. This is not permitted – Verizon can only supply you with Telephone and Internet.” *See* Attachment 3.

Verizon has encountered similar arrangements in communities throughout the Tampa area. For instance, after Verizon sought to provide FiOS video to residents of the River Chase apartment complex in Tampa, it was contacted by attorneys representing incumbent provider Bright House Networks and the apartment complex itself who demanded that Verizon cease and desist its efforts to provide video service to residents of the property, on the ground that Bright House possessed “the exclusive right to build a multi-channel video services system on the property and the exclusive right to provide multi-channel video services to the property.” Letter from Benjamin J. Shin to James C. Stroo (June 13, 2006) [Attachment 4]; *see also* Letter from Jeffrey E. Proske to Jerry Wilder (May 12, 2006) [Attachment 5]. Bright House provided Verizon with a copy of the agreement it had entered into with River Chase, which showed that it was signed by Bright House on December 15, 2005 – just two weeks before Verizon began to offer FiOS television service in the area. *See* Attachment 4. Verizon has obtained copies of two additional contracts prepared by Bright House for buildings in the Tampa area, both of which are dated May 17, 2006. *See* Attachment 6. These contracts would grant Bright House “the exclusive right for . . . Fifteen (15) years. . . to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video services.” *Id.* § 2.2(A). They would additionally prohibit the property owner from “permit[ting] other parties to . . . promote, market, solicit for or sell services that compete” with Bright House. *Id.* § 2.2(E).

The timing of these agreements is almost certainly not coincidental. Manatee County, Florida noted (in comments filed in a previous Commission proceeding) that Bright House has,

on prior occasions, responded to the granting of a franchise to a new entrant by actively soliciting exclusive access agreements from existing customers. *See* Manatee County Comments at 4-5.

Verizon has encountered similar exclusive access agreements for numerous properties across Maryland. After Verizon sought to offer FiOS television to residents of several buildings in Howard County owned by Armiger Management, Verizon was informed that Armiger previously had signed an exclusive access agreement with Comcast Corporation granting Comcast “the exclusive right and license to construct, install, operate and maintain multi-channel video distribution facilities” in all Armiger properties in the County. Similarly, Maryland Management, which manages over forty properties across the state, informed Verizon that certain of its properties were subject to similar exclusive access agreements with Comcast. The owner of a condominium in Montgomery County also prevented Verizon from offering FiOS television to residents due to a similar agreement with Comcast. Verizon has obtained a draft copy of Comcast’s standard “Services Agreement” for Montgomery County, which includes a provision granting Comcast the “exclusive right and license to construct, install, operate and maintain multi-channel video distribution facilities” for the relevant property for a period of ten years. *See* Attachment 7. A similar agreement prepared by Comcast for a property in nearby Laurel, MD, grants Comcast “the exclusive right and license to operate cable television and broadband communication and distribution facilities” for a period of eight years. *See* Comcast Cablevision of Maryland, Inc. Cable Installation and Service Agreement, ¶ 4 [Attachment 8].

Verizon has encountered similar agreements in other parts of the country. For instance, in the Dallas area, Verizon has learned of exclusive access contracts imposed by three different video providers affecting residents of over 3000 units. In California, Verizon has encountered

buildings with over 1000 combined units that are subject to exclusive access agreements with Time Warner; for instance, after Verizon attempted to offer FiOS video service to residents of three multi-family residential properties in Murrieta, CA, it received a letter from an attorney representing the property owners informing Verizon that the owners had “entered into exclusive cable agreements with Time Warner Cable” and therefore “cannot and will not permit Verizon to offer cable services to tenants residing at any of the three properties.” *See* Letter from Mark A. Nitikman to Dan Padderud (Feb. 28, 2007) [Attachment 9]. In Virginia, two property owners have told Verizon that it may not provide cable service to residents because their properties are subject to exclusive access contracts with incumbent providers, including Comcast. In total, even at this early stage of its FiOS rollout, Verizon has uncovered or been informed of exclusive access agreements covering scores of properties with tens of thousands of units in five separate states. Furthermore, the contracts Verizon has found to date have involved several different companies, including three of the largest providers in the country: Comcast, Time Warner, and Bright House. As explained above, these numbers understate the full scope of the problem, given competitive providers’ difficulties in obtaining (or sometimes even learning of) the exclusive agreements that are in place for many properties.

Verizon is not the only new entrant to face these obstacles. The *Chronicle* reported that Comcast has responded to AT&T’s entry into the Bay Area by attempting to obtain ten-year exclusive access agreements from properties in the region. *See* Attachment 1. According to the *Chronicle*, Comcast has required property owners to sign service contracts containing exclusivity provisions hidden in “occasionally dense legalese and printed in small text.” *Id.* The contracts were often accompanied by “a friendlier and more plainly written cover letter that [made] no mention of 10-year exclusivity of specific services” but simply informed building owners that

the agreement was necessary ““in order to properly protect and continue to serve your property.””

Id. As a further incentive, Comcast offered building managers a \$100 gift card in exchange for ““signing and returning the [agreement] unaltered.”” *Id.* This example also confirms that incumbent cable companies are employing exclusive access agreements as a means of protecting themselves from new entrants.

III. A Narrow, Time-Limited Remedy Will Benefit Consumers

To address these anticompetitive effects, the Commission should issue a narrowly tailored rule declaring that no video provider may enter into new, or enforce any existing, exclusive access agreements for a period of five years. This five-year period should run from the date the rule goes into effect, or, in those communities in which a new provider enters after the rule goes into effect, from the latest date a video provider obtains a franchise in the relevant area.⁶ In addition, the rule itself should be of limited duration, sunseting in five years, unless the Commission determines, based on an analysis of then-existing conditions, an extension of the rule (or some modified form) is justified.⁷ Furthermore, the rule should only govern the conduct of video providers; Verizon is not suggesting that the Commission regulate building owners or managers.

⁶ Certain states have taken action to regulate these types of contracts, for example, by barring exclusive access agreements, by mandating access, or by restricting landlords’ ability to accept compensation in exchange for exclusive access. *See, e.g.*, Conn. Gen. Stat. § 16-333a(b); Mass. Gen. Laws ch. 166A, § 22; N.J. Stat. Ann. 48:5A-49(a); Va. Code Ann. § 55-248.13:2. Regardless, even if these state laws effectively address the issue of exclusive access arrangements in some places, the national scope of the problem requires this more limited action by the Commission.

⁷ As is the case with the program access rules, providers could be permitted to apply for exemptions from the Commission in situations where a particular exclusive access agreement would be in the public interest.

The Commission has taken a similar sunset approach in the program access area and in other areas where competition could affect the need for continuing regulation.⁸ In this context, a sunset provision would result in a narrowly tailored approach that would maintain regulation in effect only until such time as competition firmly takes hold.

In addition, the rule would only prevent exclusive access agreements for a period of five years from the most recent issuance of a new franchise in a given community.⁹ In this way, the rule would be no broader than necessary to prevent incumbent providers from using exclusive access agreements as a means of thwarting meaningful competition at its inception. It would only bar such agreements in the years immediately following the entrance of a new provider into a community while competition is becoming established. Thus, incumbent providers could not employ such agreements as a means of preventing new entrants from gaining a significant market share, but once competition took hold in a given area, all providers would be free to compete for and negotiate such arrangements with property owners. This limitation recognizes that, in general, exclusive commercial arrangements may yield procompetitive results. After

⁸ See *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution and Carriage*, 8 FCC Rcd 3359 (1993). When initially promulgated, the Commission's program access regulations were scheduled to expire in 2002. At that time, the Commission conducted a thorough review of the state of competition in the industry and concluded that, "were the prohibition on exclusive contracts permitted to sunset in the current market conditions, competition and diversity in the distribution of video programming would not be preserved and protected." *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act*, 17 FCC Rcd 12153-54 ¶ 65 (2002). As a result, it elected to extend the rules for a period of five additional years. *Id.*; see also, e.g., 47 CFR § 20.6(f) (imposing 2003 sunset on spectrum aggregation rules).

⁹ If the Commission chooses to let the rule sunset at that time, these protections should still remain in effect in those communities that had granted a new franchise within the previous five years until that franchise has been in effect for five years.

competition is given a chance to take hold in the video marketplace the potential procompetitive results would justify removal of these restrictions.

IV. The Commission Possesses the Statutory Authority to Limit Exclusive Access Contracts

The Notice “tentatively conclude[s] that the Commission has authority to regulate exclusive contracts.” *See* 22 FCC Rcd at 5939. The Commission’s tentative conclusion is the correct one. As Verizon has previously explained, the Commission has the authority to regulate video providers’ practices with respect to exclusive access contracts under Section 628 of the Communications Act, 47 U.S.C. § 548(b). That provision, which was enacted as part of the Cable Television Consumer Protection and Competition Act of 1992, prohibited cable operators and others from engaging in “unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.” 47 U.S.C. § 548(b). It further required the Commission to issue regulations defining the scope of this prohibition “in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies.” *Id.* § 548(c)(1).

Section 628, by its terms, grants the Commission the authority to prohibit video providers from entering into or enforcing the types of exclusive access contracts that are at issue here. In the current marketplace, such agreements deny tenants a meaningful choice in video providers. As a result, their effect is to prevent program distributors – including Verizon and other video providers – “from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.” Likewise, given their impact on broadband deployment, such

agreements may also frustrate the “continuing development of communication technologies.” Furthermore, for the reasons explained above, the Commission should conclude, given current market conditions, that these agreements constitute “unfair methods of competition or unfair or deceptive acts or practices.”

While a primary goal of Congress in enacting Section 628 was to prohibit cable companies from unfairly blocking their competitors’ access to programming, Congress could have adopted a narrower provision if that was its sole objective. Instead, Congress enacted – over the fierce opposition of the cable lobby – the current language of Section 628, which focuses on *consumers’* access to programming, not that of satellite providers or other competitors of the cable industry. Indeed, in approving the language that is now Section 628, the House of Representatives rejected a far narrower proposal that was backed by cable companies. *See* 138 Cong. Rec. H6545-01 (July 23, 1992). The cable industry’s language would not have broadly prohibited “unfair or deceptive acts or practices” that hinder or prevent distributors from providing programming to consumers. Rather, it would have applied solely to disputes arising between programming vendors and video system operators over programming access. *See id.* at H6562. The fact that the House rejected this proposal in favor of the broader language that is now Section 628 is further evidence that Congress did not intend that provision to apply solely to programming access disputes.

Furthermore, interpreting Section 628 at this juncture to preclude video providers from entering into or enforcing exclusive access contracts is consistent with the overall purpose of the 1992 Act, which was designed to “encourage the further development of robust competition in the video programming marketplace.” H.R. Rep. No. 102-628 at 44. Congress was concerned

with encouraging the development of meaningful competition within the video marketplace. To adopt a cramped and unnatural reading of Section 628 would undermine that clear intent.

As the Commission has suggested, *see* Notice, 22 FCC Rcd at 5939, the flexible interpretation that courts have given to Section 5 of the Federal Trade Commission Act – which, like Section 628, prohibits certain types of “unfair or deceptive acts or practices,” 15 U.S.C. § 45(a)(1) – supports the proposition that the Commission has similar authority under Section 628. *Cf. American Airlines, Inc. v. North Am. Airlines, Inc.*, 351 U.S. 79, 82 (1956) (looking “to judicial interpretation of § 5 as an aid” in interpreting a statute containing similar language). Just as the FTC enjoys authority to determine the scope of Section 5 of the FTC Act, *see, e.g., FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972), so too does the Commission enjoy authority to define what constitutes an “unfair or deceptive act[] or practice[]” under Section 628. So long as the Commission determines that exclusive access contracts currently have the “purpose or effect” of significantly hindering the ability of multichannel video programming distributors to provide programming to subscribers or consumers, it may declare that such contracts are “unfair or deceptive acts or practices.” *See id.*

Finally, nothing in Section 628 limits the scope of the Commission’s authority to the regulation of new – as opposed to preexisting – exclusive access contracts. Again, Section 628 proscribes all “unfair methods of competition or unfair or deceptive acts or practices” that hinder the ability of programming distributors to provide programming to subscribers or customers. 47 U.S.C. § 548(b). Therefore, once the Commission has reached a determination that the enforcement of certain types of exclusive access contracts is a prohibited “unfair method[] of competition,” such contracts are simply unenforceable by the video providers. Nothing in the statute suggests that otherwise prohibited “unfair or deceptive acts or practices” are permissible

so long as they predate any determination that they are prohibited by Section 628. Indeed, the Commission has previously considered this question and concluded that “Congress intended that rules promulgated to implement Section 628 should be applied prospectively to existing contracts, except as specifically provided for in Section 628(h).”¹⁰ See Memorandum Opinion & Order on Reconsideration of the First Report & Order, *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 10 FCC Rcd 1902, 1939 (1994); see also First Report & Order, *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 3359, 3365 (1993) (“[T]he rules we adopt today will apply prospectively to existing contracts and to contracts executed after the effective date of the rules.”).

Nor does the Contract Clause of the U.S. Constitution limit the Commission’s authority to declare such agreements unenforceable, as that clause “by its terms applies only to state, not federal, enactments.” *Washington Star Co. v. International Typographical Union Negotiated Pension Plan*, 729 F.2d 1502, 1507 (D.C. Cir. 1984); see also *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 640-41 (1993) (“[F]ederal economic legislation . . . is not subject to constraints coextensive with those imposed upon the States by the Contract Clause.”). Rather, a party challenging a federal action that arguably impairs a contract must rely on the Due Process Clause of the Fifth Amendment, which is satisfied so long as the challenged action is not “arbitrary and irrational.” See *Pension Benefit Guar Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 729 (1984) (citation and internal quotation marks omitted). Here, a decision by the Commission to proscribe the enforcement of existing as well as new contracts is consistent with the record

¹⁰ Section 628(h) grandfathers “any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990.” 47 U.S.C. § 548(h). This provision will not prevent the Commission from prohibiting video providers from entering into or enforcing exclusive access contracts.

and not “arbitrary and irrational.” Thus there are no legal impediments to the Commission’s adopting a rule that applies equally to existing and future exclusive access contracts.

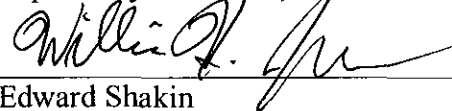
Finally, adopting the rule outlined above will be consistent with the Commission’s mandate under Section 706 to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, . . . regulating methods that remove barriers to infrastructure investment.” See 47 U.S.C. § 157 note (a). Exclusive access contracts, like exclusive franchises, act as “barriers to infrastructure investment” by reducing the incentive for new entrants to wire buildings that are subject to such agreements with new broadband facilities.

CONCLUSION

For the reasons set forth above, Verizon respectfully requests that the Commission issue a rule, subject to a five-year sunset, prohibiting video providers from entering into or enforcing exclusive access agreements.

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ATTACHMENT 1

1 of 1 DOCUMENT

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SECTION: BUSINESS; LAZARUS AT LARGE; Pg. C1**LENGTH:** 1049 words**HEADLINE:** Comcast throws a curve in its broadband pitch**BYLINE:** David Lazarus**BODY:**

As AT&T prepares to enter the video market in the Bay Area, Comcast is attempting to get owners of local apartment buildings to agree to 10-year contracts that would grant the cable giant an exclusive right to provide tenants with all broadband services.

The move is an example of skirmishing under way nationwide as the phone and cable industries face off for control of a new generation of digital technology piped into people's homes.

It also shows how advances in such technology have outpaced state and federal regulation, leaving officials frequently unsure where the line falls between traditional public utilities like AT&T and private-sector service providers like Comcast.

"It's a tough challenge because the technical changes always move faster than the regulatory regime," said Helen Mickiewicz, assistant general counsel for the California Public Utilities Commission.

Earlier this month, telecom giant Verizon -- which, like AT&T, is rolling out video service to millions of customers -- formally asked the Federal Communications Commission to block cable companies from signing exclusive deals with owners of apartment buildings.

"One of the games now is for cable to work hard to lock up apartments quickly where a new competitor is seeking a local video franchise approval," said David Fish, a Verizon spokesman. "That is using the system to block consumer choice."

Gordon Diamond, an AT&T spokesman, said the company is reviewing Verizon's FCC filing and agrees that "consumers should have a choice."

But he acknowledged that AT&T also has exclusive service contracts with some California properties for its satellite TV service offered in conjunction with Dish Network.

"We did this in response to what the cable companies were doing," Diamond said.

In Comcast's case, the 10-year contracts specify that the company would be the sole provider of "high-speed data, Internet, multichannel video programming, and other lawful services and applications that the company may provide now or in the future."

This would apparently prevent individual tenants from signing up with AT&T or any other provider for high-speed Internet access or video programming, and perhaps even phone service (which Comcast has made available to about 90 percent of Bay Area customers via Internet connections).

Comcast throws a curve in its broadband pitch THE SAN FRANCISCO CHRONICLE

"It looks like Comcast is trying its best to secure customers in anticipation of the new competition coming down the road," said Tom Bannon, executive director of the California Apartment Association, which represents the owners of more than 1 million rental units statewide.

Comcast spokesman Andrew Johnson said it should be up to property owners and managers to decide what services are available to tenants.

"They have a right to control what goes on in their property," he said. "If they want Comcast to be the exclusive telecommunications provider to the property, that's what they want."

Johnson noted that property owners also control the types of washing machines or vending machines in their buildings.

"If that means you can only get Pepsi," he said, "that's how it is."

But the situation is more complex than that. For years, state and federal laws have prohibited phone companies from inking exclusive deals for voice service with "multi-dwelling units," which can account for anywhere from dozens to thousands of customers in a single location.

The statutes resulted from attempts by phone companies in the 1990s to place competitors at a disadvantage by denying them new business.

In California, Section 626 of the Public Utilities Code stipulates that "a public utility may not enter into any exclusive access agreement" with a property owner or manager "that would limit the right of any other public utility to provide service to a tenant or other occupant of the property or premises."

But does this law apply to AT&T and Verizon offering nonvoice services like Internet access and video programming? And does it also apply to cable companies now that they're getting into the phone business?

The answers are no and no.

"It applies to traditional phone service only," said Terrie Prosper, a spokeswoman for the state Public Utilities Commission.

As such, she said Comcast is free to seek exclusive service deals for the full range of its broadband services, including digital phone service. Similarly, AT&T and Verizon are free to seek exclusive contracts with building owners for their Internet and video services.

AT&T's Diamond declined to comment on whether the company will seek exclusive arrangements when it rolls out its video service in California -- a move expected by next year at the latest.

Comcast's exclusivity would be clear to building owners only if they take the time to read the contract, which is written in occasionally dense legalese and printed in small text.

The contract is accompanied in some cases by a friendlier and more plainly written cover letter that makes no mention of 10-year exclusivity or specific services.

It says only that a contract is required "in order to properly protect and continue to service your property."

It also states: "As a thank you for your time, for signing and returning the Broadband Service Agreement unaltered (emphasis added), you will receive a \$100 American Express Gift Cheque which will be sent to you with your copy of the fully executed agreement."

John Sampson is a San Francisco property manager who recently received Comcast's letter and contract for a 14-unit building he oversees.

"The letter is totally benign compared to the document itself," he said. "God knows how many people just signed the contract and sent it in."

Comcast's 10-year contract with apartment building owners gives the cable company exclusive rights to "cabling, wiring, fiber-optic lines, power supplies" and other resources within the property.

The contract stipulates that Comcast will maintain control over all fees charged to building tenants. After the initial 10-year term ends, the contract will be automatically renewed every five years unless written notice is provided by either Comcast or the building owner.

Comcast throws a curve in its broadband pitch THE SAN FRANCISCO CHRONICL

Bannon at the California Apartment Association said building owners shouldn't sign any long-term contract without running it by an attorney.

"You also want to take the time to understand the possible ramifications to residents," he said.

LOAD-DATE: July 19, 2006

ATTACHMENT 2

IMPORTANT NOTICE TO ALL RESIDENTS - PLEASE READ

It is with great pleasure that we can announce the completion of the fiber optics install at Hamlin. It is our hope that this added service will be enjoyed by all our residents.

PLEASE NOTE: There is one very important detail that you need to be informed of.

You have either been contacted or will be contacted by Verizon Florida who is selling package deals which include telephone, internet and cable television. We are sorry to inform you that cable television through Verizon is not available to our residents.

When the property was built the original builder signed a 10 year contract with Bright House Networks. Until this agreement expires Bright House has the exclusive right to supply cable television. Meaning no other company may install cable television on this property. This also means that if you require the internet service from Verizon it can be installed through a wireless router **ONLY**. The cable line may **NOT** be used.

As much as we would like you to be able to take advantage of their great offer it is with regret that cable television is not available to our residents from Verizon at this time.

If you have any questions please call the office.

Thank you
Hamlin Management

ATTACHMENT 3

Fourth Bayshore Condominium Association, Inc.
2300 Canal Drive, Bradenton, FL 34207

VERY IMPORTANT – PLEASE READ IMMEDIATELY

October 20, 2006

TO ALL OWNERS:

*John - store mgr.
10/19/06*

Re: Digital Communication Networks, Inc and Verizon Florida Inc.

We have received correspondence from the attorneys representing DC Nets informing us that **Effective immediately** we must cease and desist from using Verizon TV Cable Service.

It has been brought to our attention that individual owners have purchased packages from Verizon that *include cable television*

This is not permitted – Verizon can only supply you with Telephone and Internet.

IV Bayshore Association has signed an exclusive contract with DC Nets and until this contract expires December 31st 2011; we, as an Association and as Individual Owners are not allowed to use any other Television Cable Service.

Because of the possibility of a law suite, we have placed this matter in the hands of our lawyers

If you have any questions regarding this matter, please contact:

CLARE MORRIS 752-7390

RUTH FREER 758-5034

cc: Robert Zeisner

ATTACHMENT 4

SABIN, BERMANT & GOULD LLP

ATTORNEYS AT LAW

FOUR TIMES SQUARE

NEW YORK, N Y 10036-6526

BENJAMIN J. SHIN

DIRECT DIAL: 212-381-7122

FAX: 212-381-7231

E-MAIL: bshin@sbandg.com

June 13, 2006

Via DHL

James C. Stroo, Esq.
Associate General Counsel – Mass Markets
Verizon
600 Hidden Ridge
HQE03J11
Irving, TX 75038

Re: River Chase Apartments in Tampa, FL

Dear Mr. Stroo,

I am writing to you as counsel to Bright House Networks, LLC ("BHN"). We were recently informed that Verizon has interfered and continues to interfere with our client's contract rights with respect to the above property. As Verizon previously has been informed (see the attached letter dated May 12, 2006), BHN has an agreement with Riverchase Florida, LLC (the "Owner"), the owner of the above property, granting BHN certain exclusive rights, including the exclusive right to build a multi-channel video services system on the property and the exclusive right to provide multi-channel video services to the property. Please find attached excerpts of BHN's agreement with the Owner showing the relevant provisions and the terms of our client's exclusive rights.

We understand that not only has Verizon installed a multi-channel video services system on the property and begun providing such services to the property, but that Verizon has even tampered and interconnected with BHN's own system. From BHN's conversations with the Owner, we understand that Verizon may be purporting to claim legal authority for its actions under Florida state law and/or easement rights. Our research reveals no such legal authority or easement. Therefore, given BHN's existing agreement with the Owner, such activities of Verizon were and are clearly unauthorized and constitute interference with our client's contractual rights.

For the reasons provided above, BHN hereby demands that Verizon immediately (a) cease and desist in any of the above activities on the property, (b) disconnect its multi-channel video services system from BHN's multi-

channel video services system on the property and (c) remove Verizon's multi-channel video services system from the property. We of course expect and insist that such disconnection and removal be performed without any disruption of BHN's services to its subscribers. Please instruct your operational staff in Tampa to call David Marvin at BHN at (727) 329-2206 in order to coordinate such disconnection and removal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Shin".

Benjamin J. Shin, Esq.

Attachments

cc: David Ross
David Marvin
John Russo
Jeffrey E. Proske, Esq.

Residential Services Agreement

DATE: November _____, 2005

PARTIES

Operator:

Bright House Networks, LLC
2728 S Falkenburg Rd Riverview, FL 33569
Contact Person: Mark Demasi
Telephone: 813- 436 2197
Facsimile: 813- 628 4091

Owner:

River Chase Florida, LLC
c/o Brentwood Asset Management
12100 Wilshire Blvd., Suite 250
Los Angeles, California 90025
Contact Person: Asset Management
Telephone: 310.826.7301
Facsimile: 310.207.8497

PROPERTY:

River Chase Apartments
6900 Aruba Avenue
Temple Terrace, FL 33637
Contact Person: Property Manager
Telephone: 813-989-2052
Facsimile: 813-980-1574
Units: 776

RECITALS

- Owner owns the Multi-Family residential community and underlying land referred to above (the "Property") and as further described in the legal description set forth on Exhibit A.
- Owner and Operator wish to make the Services available to residents of the Property ("Residents") in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the Recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Operator's Basic Obligations.**
 - 1.1 **Multi-Channel Video Services.** Upon completion of construction or upgrading of the System (as defined below), if necessary, or within 30 days after the execution of this Agreement if no construction or upgrading is necessary. Operator will offer multi-channel video cable television service to the Property over the System ("Services"). Upon giving notice to Residents, Operator may change (or discontinue) any Services and rates to the extent not prohibited by Laws and Regulations (as defined in Section 10.3). Operator will individually bill Residents for the Services, taxes, franchise fees, and other fees assessed in conjunction with the Services. All Services are subject to availability at the Property.

- (A) **Internet Access Service.** Subject to availability at the Property, Operator will offer Internet access service over the System ("Internet Access Service") to Owner and Residents. The Multi-Channel Video Services does not include Internet Access Service that shall be offered on a non-exclusive basis. Internet Access Service is collectively referred to as the "Additional Services".
- (B) **Additional Services.** Operator may offer Additional Services to Owner and Residents on a non-exclusive basis. "Additional Services" includes Internet Access Service and means any services other than the Multi-Channel Video Services that can be provided to the Property over the System.

- 1.2 **Installation of System (as Applicable)** To the extent necessary (e.g., there is no, or there is insufficient, existing wiring and facilities, or the existing wiring and facilities are owned, or otherwise controlled, by a third party) and at no charge to Owner, Operator will design, construct, install and/or upgrade the System in accordance with industry standards, Laws and Regulations, and a construction plan and schedule agreed upon by Owner and Operator. "System" means all equipment, facilities, internal and external wiring, conduit, and molding that Operator installs or upgrades on the Property or that exist and Operator is allowed to use on the date of this Agreement and that Operator uses to deliver the Services. Upon completion of construction, Operator will repair and restore all portions of the Property damaged by Operator to its condition immediately prior to such construction.
- 1.3 **Maintenance of System.** Operator agrees to provide to the Premises Multi-Channel Video Services, and Additional Services, that are reasonably competitive and generally comparable with the services being offered by Operator or by another franchised Cable Television provider to the majority of other apartment communities within Hillsborough County and which Operator or another franchised Cable Television provider serves, with the objective that the Owner is not at a competitive disadvantage with similar properties. In the event that, through no act or omission of the Owner, Owner believes that the Multi-Channel Video Services, and Additional Services provided by Operator are not reasonably competitive or generally comparable to similar services being provided by another franchised Cable Television provider to the majority of other apartment communities in Hillsborough County, Florida, and as a result Owner is at a competitive disadvantage with similar properties, then Owner shall give Operator written notice describing how the Multi-Channel Video Services, and Additional Services, provided by Operator is not reasonably competitive or generally comparable. Operator shall have thirty (30) days to respond to Owner disputing Owner's claim or with a proposal to make the Multi-Channel Video Services, and Additional Services reasonably competitive and to implement same within ninety (90) days, unless more time is reasonably required due to circumstances beyond the reasonable control of Operator, and so long as Operator diligently proceeds to implement such proposal.

2. Ownership and Use of System during Term of Agreement.

During the term of this Agreement, Operator will own and have the exclusive right to access, control and operate the System, unless Owner paid for such equipment, facilities, conduit or wiring to be installed, or such equipment, facilities, conduit or wiring is owned by a third party, in which case (as between Owner and Operator), Owner shall own such items and Owner hereby grants to operator the exclusive right to access and use such items during the term of this Agreement. Owner shall not permit any part of the System to be interfered with or used by any third party. The System will not be deemed to be affixed to or a fixture of the Property. Owner shall not access, operate, or move the System during the term of this Agreement. Owner will provide the power necessary to operate any of Operator's equipment that is located on the Property. All internal building coaxial wiring will remain the property of the Owner and not removed by Operator.

3. Owner's Basic Obligations; Grant of Easement and Other Rights.

- 3.1 **Easement.** In consideration of the covenants and agreements in this Agreement, for \$10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby grants to Operator, its successors and assigns, a non-exclusive easement on the Property and all its improvements for the purposes of permitting Operator, its affiliates and contractors to design, construct, install, operate, maintain, market, upgrade, repair, replace, and remove the System and to provide Services. Operator will have and hold the easement, together with every right and appurtenance connected to it, for the term of this Agreement and for so long thereafter as Operator is providing services to the Property under this Agreement. When that period expires, this easement will terminate after an additional 90-day continuation period solely for the purpose of allowing Operator to remove its System. Owner, its successors and assigns hereby agree to warrant and forever defend the easement to Operator--as well as its successors and assigns--against every person who claims any part of it. This easement and other rights granted to Operator run with the title to the Property and are binding on Owner and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property. Operator may record this Agreement at any time.

3.2 **Grant of Other Rights.** Owner acknowledges that Operator will spend substantial time, resources, and money in meeting its obligations under this Agreement, and that Operator is relying on Owner's covenants in this Agreement in order to recoup its investment by providing the Services to the Property and by collecting revenues from Residents. Owner hereby grants to Operator (A) the exclusive right for the first Twelve years of this Agreement, and the non-exclusive right thereafter, to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video cable television services ("Marketed Services"), (B) the exclusive right to install, occupy, maintain, and remove the molding and other conduit housing the wiring of the System without alteration by Owner or third parties, (C) the exclusive right for the first seven years of this Agreement, and the non-exclusive right thereafter, to offer and provide the Marketed Services to Residents, (D) the exclusive right for the first ten years of this Agreement, and the non-exclusive right thereafter, to market the Marketed Services to Residents, and (E) the non-exclusive right to market, offer and provide all other Services to Residents at the Property. During any applicable exclusivity period, Owner shall not, and Owner shall not permit other parties (including other service providers) to (i) promote, market, solicit for or sell services that compete with Operator's multi-channel video cable television services at the Property (including, but not limited to, the provision of such services on a bulk basis), (ii) take any action (or make any omission), directly or indirectly, that is designed to or has the effect of encouraging or facilitating Residents to choose another provider's services that compete with Operator's multi-channel video cable television services, or (iii) install additional equipment or facilities or upgrade existing equipment or facilities to enable such other provider to provide services that compete with Operator's multi-channel video cable television services. Where Laws and Regulations prohibit Owner from granting or Operator from obtaining exclusive rights under this Section 3.2, then such rights automatically shall become non-exclusive to the extent and only for so long as required by Laws and Regulations.

4. Term.

This Agreement shall last for a term of Twelve (12) years commencing on the date that the agreement is executed and shall automatically renew for additional 30 day terms unless either party notifies the other party of its desire not to renew at least 90 days prior to the end of the initial or any renewal term.

5. Owner's Representations and Warranties.

Owner represents and warrants that (A) Owner is the owner in fee simple of the Property, no purchase contracts exist with respect to the Property, and the legal description attached to this Agreement is the complete, accurate and current legal description for the Property; (B) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (C) Owner has the full power and authority to negotiate, execute, deliver and perform this Agreement and that the signatory below has been authorized to execute and deliver this Agreement; (D) Owner owns and/or has the right to grant to Operator hereunder the exclusive right to use all parts of the System not owned by Operator (including any third party wiring, molding or components, if any); and (E) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this Agreement.

6. Breach of Agreement.

If a party breaches any term of this Agreement and fails to cure such breach within 30 days after receiving notice from the non-breaching party reasonably detailing the breach, then the non-breaching party may terminate this Agreement, bring an action against the breaching party for damages; or seek any other available legal or equitable remedy.

Bright House Networks, LLC

By: David C Ross

David C Ross

Vice President of Commercial Markets

Witnesses:

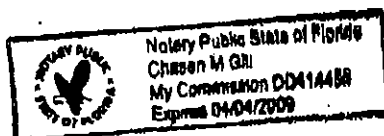
Jeronica CollinsPrint Name: Jeronica CollinsAngela D. AguilarPrint Name: Angela D. AguilarState of FLCounty of Hillsborough ss:

This instrument was acknowledged before me by David C Ross as a Vice-President of Bright House Networks, LLC on the 15 day of December, 2005.

Witness my hand and official seal.

[Signature]
Notary Public

[SEAL]

My commission expires: 4/4/09

DATED: November 4, 2005

Owner:

River Chase Florida, LLC,
A Florida Limited Liability Company

By: _____

Richard J. Nathan

Title: _____
President

Witnesses:

Print Name: _____

Petra DeBuclet

Print Name: _____

Jeffrey E. Broske

State of California)

County of Los Angeles) ss:

This instrument was acknowledged before me by Richard J. Nathan as the President of River Chase Florida, LLC on the 14th day of November, 2005.
Witness my hand and official seal.

Notary Public

[SEAL]

My commission expires: April 5, 2007



ATTACHMENT 5

JEFFREY E. PROSKE
A Professional Corporation
12100 Wilshire Blvd., Suite 250
Los Angeles, CA 90025
Phone: (310) 826-7301
Facsimile: (310) 207-8497
E-mail: Jeffrey.proske@brentwoodam.com

May 12, 2006

jerry.wilder@verizon.com
Jerry Wilder
Senior Director
Verizon
112 S. Lakeview Canyon Road
Mailcode: CA501WSC
Thousand Oaks, CA 91362-3831

Re: River Chase Apartments – Multi Channel Video Service

Dear Mr. Wilder:

I am writing on behalf of Riverchase Florida, LLC ("Owner") the owner of the above-referenced apartment building ("Riverchase"). It has come to our attention that Verizon has sought to provide multi channel video services to tenants of Riverchase. Please note that the Owner is a party to an agreement for the provision of such multi channel video services with Bright House Networks, LLC ("Bright House") which entitles Bright House to the exclusive right to provide such services to tenants of Riverchase for ten years.

This letter will serve as Owner's notice to Verizon to terminate any multi channel video services that may presently be provided to tenants of Riverchase and to refrain from providing any future multi channel video services to tenants of the property.

Please do not hesitate to contact me if you have any questions with respect to this matter.

Very truly yours,



Jeffrey E. Proske
General Counsel,
Riverchase Apartments, LLC

cc: David.Marvin@mybriighthouse.com
Richard J. Nathan
Neil Schimmel
Bobbie Putnam
Dave Watkins

ATTACHMENT 6

EASEMENT AND RIGHT OF ENTRY AGREEMENT

DATE: May 17, 2006

PARTIES

Operator:

Bright House Networks, LLC
2728 S Falkenburg Rd Riverview, FL 33569
Contact Person: Mark Demasi
Telephone: 813- 436 2197
Facsimile: 813- 628 4091_

Owner:

Rosewood LLC, a Florida Limited Liability Corp
«O_Ad1»
«O_City», «O_State» «O_Zip»
Contact Person: «OContact»
Telephone: «OC_Phone»
Facsimile:

PROPERTY:

Rosewood Apartments
8525 N Armenia Avenue
Tampa FL, 33604
Units 66
Contact Person:
Telephone:
Facsimile:

RECITALS

- Owner owns the Multi-Family residential community and underlying land referred to above (the "Property") and as further described in the legal description set forth on Exhibit A.
- Owner and Operator wish to make the Services available to residents of the Property ("Residents") in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the Recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Operator's Basic Obligations.

- 1.1 Multi-Channel Video Services.** Upon completion of construction or upgrading of the System (as defined below), if necessary, or within 30 days after the execution of this Agreement if no construction or upgrading is necessary, Operator will offer multi-channel video cable television service to the Property over the System ("Services"). Upon giving notice to Residents, Operator may change (or discontinue) any Services and rates to the extent not prohibited by Laws and Regulations (as defined in Section 10.3). Operator will individually bill Residents for the Services, taxes, franchise fees, and other fees assessed in conjunction with the Services. All Services are subject to availability at the Property.

- (A) Internet Access Service.** Subject to availability at the Property, Operator will offer Internet access service over the System ("Internet Access Service") to Owner and Residents. The Multi-Channel Video Services

does not include Internet Access Service that shall be offered on a non-exclusive basis. Internet Access Service is collectively referred to as the "Additional Services".

- (B) **Additional Services.** Operator may offer Additional Services to Owner and Residents on a non-exclusive basis. "Additional Services" includes Internet Access Service and means any services other than the Multi-Channel Video Services that can be provided to the Property over the System.

- 1.2 **Installation of System (as Applicable)** To the extent necessary (e.g., there is no, or there is insufficient, existing wiring and facilities, or the existing wiring and facilities are owned, or otherwise controlled, by a third party) and at no charge to Owner, Operator will design, construct, install and/or upgrade the System in accordance with industry standards, Laws and Regulations, and a construction plan and schedule agreed upon by Owner and Operator. "System" means all equipment, facilities, internal and external wiring, conduit, and molding that Operator installs or upgrades on the Property or that exist and Operator is allowed to use on the date of this Agreement and that Operator uses to deliver the Services. Upon completion of construction, Operator will repair and restore all portions of the Property damaged by Operator to its condition immediately prior to such construction.

- 1.3 **Maintenance of System.** Operator agrees to provide to the Premises Multi-Channel Video Services, and Additional Services, that are reasonably competitive and generally comparable with the services being offered by Operator or by another franchised Cable Television provider to the majority of other apartment communities within Hillsborough County and which Operator or another franchised Cable Television provider serves, with the objective that the Owner is not at a competitive disadvantage with similar properties. In the event that, through no act or omission of the Owner, Owner believes that the Multi-Channel Video Services, and Additional Services provided by Operator are not reasonably competitive or generally comparable to similar services being provided by another franchised Cable Television provider to the majority of other apartment communities in Hillsborough County, Florida, and as a result Owner is at a competitive disadvantage with similar properties, then Owner shall give Operator written notice describing how the Multi-Channel Video Services, and Additional Services, provided by Operator is not reasonably competitive or generally comparable. Operator shall have thirty (30) days to respond to Owner disputing Owner's claim or with a proposal to make the Multi-Channel Video Services, and Additional Services reasonably competitive and to implement same within ninety (90) days, unless more time is reasonably required due to circumstances beyond the reasonable control of Operator, and so long as Operator diligently proceeds to implement such proposal.

2. **Ownership and Use of System during Term of Agreement.**

During the term of this Agreement, Operator will own and have the exclusive right to access, control and operate the System, unless Owner paid for such equipment, facilities, conduit or wiring to be installed, or such equipment, facilities, conduit or wiring is owned by a third party, in which case (as between Owner and Operator), Owner shall own such items and Owner hereby grants to operator the exclusive right to access and use such items during the term of this Agreement. Owner shall not permit any part of the System to be interfered with or used by any third party. The System will not be deemed to be affixed to or a fixture of the Property. Owner shall not access, operate, or move the System during the term of this Agreement. Owner will provide the power necessary to operate any of Operator's equipment that is located on the Property.

Owner's Basic Obligations; Grant of Easement and Other Rights.

- 2.1 **Easement.** In consideration of the covenants and agreements in this Agreement, for \$10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby grants to Operator, its successors and assigns, a non-exclusive easement on the Property and all its improvements for the purposes of permitting Operator, its affiliates and contractors to design, construct, install, operate, maintain, market, upgrade, repair, replace, and remove the System and to provide Services. Operator will have and hold the easement, together with every right and appurtenance connected to it, for the term of this Agreement and for so long thereafter as Operator is providing services to the Property under this Agreement. When that period expires, this easement will terminate after an additional 90-day continuation period solely for the purpose of allowing Operator to remove its System. Owner, its successors and assigns hereby agree to warrant and forever defend the easement to Operator--as well as its successors and assigns--against every person who claims any part of it. This easement and other rights granted to Operator run with the title to the Property and are binding on Owner and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property. Operator may record this Agreement at any time.

- 2.2 Grant of Other Rights.** Owner acknowledges that Operator will spend substantial time, resources, and money in meeting its obligations under this Agreement and that Operator is relying on Owner's covenants in this Agreement in order to recoup its investment by providing the Services to the Property and by collecting revenues from Residents. Owner hereby grants to Operator (A) the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video services ("Marketed Services"), (B) the exclusive right to install, occupy, maintain, and remove the molding and other conduit housing the wiring of the System without alteration by Owner or third parties, (C) the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to offer and provide Multi-Channel Video Services the Marketed Services to Residents, (D) the exclusive right for the Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to market the Marketed Services to Residents, and (E) the non-exclusive right to market, offer and provide all other Services to Residents at the Property. During any applicable exclusivity period, Owner shall not, and Owner shall not permit other parties (including other service providers) to (i) promote, market, solicit for or sell services that compete with Operator's multi-channel video cable television services at the Property (including, but not limited to, the provision of such services on a bulk basis), (ii) take any action (or make any omission), directly or indirectly, that is designed to or has the effect of encouraging or facilitating Residents to choose another provider's services that compete with Operator's multi-channel video cable television services, or (iii) install additional equipment or facilities or upgrade existing equipment or facilities to enable such other provider to provide services that compete with Operator's multi-channel video cable television services. Where Laws and Regulations prohibit Owner from granting or Operator from obtaining exclusive rights under this Section 2.2, then such rights automatically shall become non-exclusive to the extent and only for so long as required by Laws and Regulations.
- 3. Term.** Owner hereby grants Bright House Networks a Fifteen (15) year exclusive right to enter the Premises and provide any or all Services to residents of the Premises ("Right of Entry Term"). The Right of Entry Term shall commence on the date this agreement is fully executed by both parties. The Right of Entry Term shall be automatically renewed for successive (1) year terms thereafter, unless Owner or Bright House Networks gives written notice to the other party of its intention not to renew at least 90 days prior to expiration of the initial or any renewal term. Charges for Services during the Right of Entry Term shall be set by Bright House Networks and shall be billed to individual residents of the Premises. In the event a resident of the Premises has contracted with Bright House Networks for Services and is delinquent in payment to Bright House Networks, Owner shall cooperate in recovering any of Bright House Networks' equipment from the unit of such resident
- 4. Owner's Representations and Warranties.** Owner represents and warrants that (A) Owner is the owner in fee simple of the Property, no purchase contracts exist with respect to the Property, and the legal description attached to this Agreement is the complete, accurate and current legal description for the Property; (B) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (C) Owner has the full power and authority to negotiate, execute, deliver and perform this Agreement and that the signatory below has been authorized to execute and deliver this Agreement; (D) Owner owns and/or has the right to grant to Operator hereunder the exclusive right to use all parts of the System not owned by Operator (including any third party wiring, molding or components, if any); and (E) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this Agreement.
- 5. Breach of Agreement.** If a party breaches any term of this Agreement and fails to cure such breach within 30 days after receiving notice from the non-breaching party reasonably detailing the breach, then the non-breaching party may terminate this Agreement, bring an action against the breaching party for damages; or seek any other available legal or equitable remedy.
- 6. No Warranties; Limitation of Liability.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED--REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. Neither party shall be liable to the other or to any third party for any indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of service, rent, profits or business opportunities. Notwithstanding the

foregoing, Operator shall be entitled to seek and obtain, as direct damages, lost revenues for Service to the Property for Owner's breach of or default under this Agreement. Notwithstanding anything above, Operator agrees to comply with Section 1.3 of this Agreement and to maintain the System at its sole expense

7. Indemnity.

- 7.1 From Operator.** Operator will indemnify, defend and hold harmless Owner and, as applicable, Owner's shareholders, members, partners, directors, managers, officers, employees, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its Related Parties that result from Operator's design, construction, installation, operation, or maintenance of the System or provision of Services.
- 7.2 From Owner.** Owner will indemnify and hold harmless Operator and Operator's Related Parties from and against all Losses incurred by Operator or its Related Parties that result from (A) damage to any part of the System caused by the gross negligence of the Owner, its employees or agents, or any third party that has entered the Property with Owner's permission, (B) any claim arising out of Owner's operation of the Property, and (D) Owner's breach of its representations and warranties in Article 5 or its covenants in Section 3.

8. Ownership and Removal of System after Termination or Expiration; Mandatory Access Laws and Regulations.

- 8.1 Ownership and Removal of System after Termination or Expiration.** Subject to Laws and Regulations, after this Agreement has expired or been terminated, Operator shall remove any of the above ground equipment, but leave any of the underground components, of the Services Delivery System, and remove any of the other properties placed on the Premises by Operator within a period of 90-days following the termination of this agreement. If Operator damages the Premises when it removes the Services Delivery System or any of its other properties from the Premises, Operator will repair and restore such damage. If any of the Services Delivery System or other property of Operator is not removed from the premises, then Operator will continue to own such property so long as it holds a franchise to provide cable service in the jurisdiction where the Premises are located, and thus has a reasonable expectation that it may again become authorized to deliver its services to residents of the Premises. If Operator so elects, it may lease any portion of the Services Delivery System to Owner or any other party following expiration of this Agreement pursuant to such terms and conditions as may be agreed to by such parties. Operator and Owner agree that any use by Owner or any third party of the Services Delivery System or any other property of Operator located on the Premises, whether with or without the consent of Operator, shall not disturb Operator's continued right to ownership of any such property. Owner shall provide Operator access to the Premise's electrical system.
- 8.2 Mandatory Access Laws and Regulations.** Notwithstanding anything to the contrary in this Article 9 or the Agreement, if Laws and Regulations require Owner to provide Operator with access to the Property for the provision of any service, then Operator shall (A) continue to own and be permitted to access and use all wiring and other components of the System, for so long as permitted by Laws and Regulations, to provide service to the Property and (B) have the right to remove, abandon, disable, or sell such wiring and other components of the System within 90 days after Operator no longer is permitted by Laws and Regulations to provide such services.

9. Miscellaneous Provisions.

- 9.1 Notices.** All notices, requests, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this Agreement. Such notice shall be effective, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.
- 9.2 Force Majeure.** Despite anything to the contrary in this Agreement, neither party will be liable or in default under this Agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the nonperforming party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; severe weather,

earthquakes, or floods; fires or explosions; governmental action or regulation; strikes, lockouts, or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. The time for performance of a party hereunder shall be extended commensurate with the duration of the Force Majeure Event.

- 9.3 Compliance with Laws and Regulations; Choice of Law.** This Agreement shall be subject to, and in the performance of their respective obligations under this Agreement the parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasi-governmental and regulatory authorities with jurisdiction over the parties), and, with respect to Operator only, the requirements of Operator's franchise agreement for the Area (collectively, "Laws and Regulations"). Nothing in this Agreement shall prohibit Operator from fully complying with all Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the Federal Communications Commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this Agreement. This Agreement is governed by and shall be interpreted under the laws of the state in which the Property is located, without regard to its choice-of-law provisions.
- 9.4 Severability and Replacement of Unenforceable Provisions.** If any portion of this Agreement is rendered invalid or otherwise unenforceable under Laws and Regulations or by a governmental, legal or regulatory authority with jurisdiction over the parties, then the remainder of this Agreement will continue in full force unless such continuance will deprive one of the parties of a material benefit hereunder or frustrate the main purpose(s) of this Agreement. In such event, the party that has been deprived of such material benefit ("Affected Party") may notify the other, and the parties promptly thereafter shall use their reasonable best efforts to replace or modify the invalid or unenforceable provision with a provision that, to the extent not prohibited by Laws and Regulations, achieves the purposes intended under the invalid or unenforceable provision. If the parties are unable to reach agreement on replacement or modification of the invalid or unenforceable provision within 60 days after notification from the Affected Party, then the Affected Party may terminate this Agreement upon 60 days notice.
- 9.5 Modification; Waiver; Scope of Agreement; Assignment.** This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supersedes all other agreements relating to, the subject matter contained herein. This Agreement can be modified or changed only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this Agreement will be effective only if in writing. This Agreement shall be freely assignable by either party.
- 9.6 Enforcement Costs.** If either party sues or brings any other type of enforcement action in connection with this Agreement, then the prevailing party shall be entitled to seek to recover its reasonable attorneys' fees and other costs in connection with such action.
- 9.7 Survival.** The terms of Articles 3, 7, 8, 9, and 10 will survive the expiration or termination of this Agreement for any reason.
- 9.8 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original.
- 9.9 No Conflicts.** Owner represents to Operator that there are no agreements or other instruments that conflict with, or otherwise prohibit or inhibit Operator from installing the System on the Property and providing the Services, and that Operator's action of installing the System on the Property is not in conflict in anyway with any agreements that Owner may have with any other party. Owner shall defend Operator from any claims or actions arising out of Operator's installation of the System or from Operator's provision of the Services or Additional Services.
- 9.10 Consideration.** As consideration for the rights and privileges granted to Operator by Owner under this Agreement, including the exclusive rights granted by Owner to Operator, Operator shall pay to Owner an access fee in the amount of two hundred (\$200) dollars per unit for a total of 66 units. This Consideration shall be paid within 90 days of the date that this Agreement is fully and properly executed by both parties and only if Owner provides Operator with a properly completed and valid W-9 form, and provides same within 45 days of the date that this agreement executed by both parties. Operator shall not be required to provide the Consideration, or shall otherwise be entitled to a complete and full refund of the Consideration paid by Owner, if the Owner is in breach of this Agreement.

- 9.11 Courtesy Accounts.** Operator shall provide to Owner a total of two (2) Courtesy Accounts consisting of Owner's Standard Cable service (about 68 channels) to locations that are reasonably accessible to Owner, and that are locations on the Property such as a club house, office, or on-site resident manager's residence or other employee of Owner.
- 10. Confidential Information; Announcements.** Except as specifically provided in this Agreement, and except for disclosures required by Laws and Regulations and prospective buyers of the Owner, Owner and Operator will (A) keep this Agreement and its terms confidential, (B) keep confidential any information that is provided by one party to the other and that is marked as confidential, (C) not use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval.

**Rosewood LLC, a Florida
Limited Liability Corp**

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)

) ss:

County of _____)

This instrument was acknowledged
before me by _____ as the _____
of _____ on the
_____ day of _____,
2006.

Witness my hand and official seal.

[SEAL]

Notary Public

My commission expires: _____

Bright House Networks, LLC

Date: _____

By: _____

David C. Ross

Title: **Vice President of Commercial Markets**

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)

) ss:

County of _____)

This instrument was acknowledged
before me by **David C. Ross** as the **Vice
President of Commercial Markets of
Bright House Networks, LLC**, on the _____
day of _____, 2006.

Witness my hand and official seal.

[SEAL]

Notary Public

My commission expires: _____

Exhibit A
Legal Description of the Property

Attached.

**Easement and Memorandum of
Agreement**

Grant of Easement

In consideration of \$10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Rosewood LLC, a Florida Limited Liability Corp ("Grantor") grants to Bright House Networks, LLC ("Grantee"), its successors and assigns, a non-exclusive easement on Grantor's property and all its improvements (as described in the attached Exhibit A) (the "Property"). This easement is for the purposes of permitting Grantee and its affiliates and contractors to design, construct, install, operate, market, maintain, upgrade, repair, replace, and remove a system (including internal and external wiring, poles, conduits, molding, pipes, antennas, servers, switch equipment, software, central processing units and other facilities and equipment ("System") for the delivery of cable television, entertainment, video, internet access, and other services that may be delivered over the System to the Property, as more fully provided in the Easement, Installation and Service Agreement between Grantor and Grantee with respect to the Property (the "Agreement"). During the term of the Agreement and this Easement, Grantee shall own, and Grantee shall have the exclusive right to access, control and operate, the System, and the System shall not be deemed to be affixed to or a fixture of the Property. Ownership and removal of the System after the expiration of the Agreement and this Easement shall be pursuant to the Agreement. Grantor will also provide reasonable space for Grantee's equipment.

Grantor reserves the right to grant other easements on the Property, but will not allow such other easements to cause unreasonable interference with the easement granted to Grantee herein.

Grantee will have and hold the easement, together with every right and appurtenance connected to it, for an initial term of 15 years and 90 days, or for so long as Operator is allowed to have its System on the Property pursuant to the Agreement. Grantor, its successors and assigns hereby agree to warrant and forever defend the easement to Grantee--as well as its successors and assigns--against every person who claims any part of it.

This easement shall not amend, modify, terminate, release or discharge any party from its rights or obligations under any other written easement with respect to the Property. If Grantee currently has the right to serve the Property under any other written easement, then such other easement shall survive this easement and shall continue to bind the parties in accordance with its terms; provided, however, that in the event of any conflict between the terms of any such other easement and this easement during the term hereof, this easement shall control.

This easement and other rights granted to Grantee run with the title to the Property and are binding on Grantor and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property.

11. Memorandum of Agreement

In addition to the rights granted above, the Agreement grants to Grantee certain exclusive rights to market and provide Multi-Channel Video Services, and certain non-exclusive rights to provide Internet Access Service and Additional Services to Grantor and to residents of the Property.

[DATE, SIGNATURE, AND NOTARIZATION ON FOLLOWING PAGE]

My commission expires:_____

My commission expires:_____

EASEMENT AND RIGHT OF ENTRY AGREEMENT

DATE: May 17, 2006

PARTIES

Operator:

Bright House Networks, LLC
2728 S Falkenburg Rd Riverview, FL 33569
Contact Person: Mark Demasi
Telephone: 813- 436 2197
Facsimile: 813- 628 4091__

Owner:

Pinecrest Village, LLC a Florida Limited Liability Corp
«O_Ad1»
«O_City», «O_State» «O_Zip»
Contact Person: «OContact»
Telephone: «OC_Phone»
Facsimile:

PROPERTY:

Windsor Manor
8516 Pinetree Ct
Tampa FL, 33604
Units 194
Contact Person:
Telephone:
Facsimile:

RECITALS

- Owner owns the Multi-Family residential community and underlying land referred to above (the "Property") and as further described in the legal description set forth on Exhibit A.
- Owner and Operator wish to make the Services available to residents of the Property ("Residents") in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the Recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Operator's Basic Obligations.

- 1.1 Multi-Channel Video Services.** Upon completion of construction or upgrading of the System (as defined below), if necessary, or within 30 days after the execution of this Agreement if no construction or upgrading is necessary, Operator will offer multi-channel video cable television service to the Property over the System ("Services"). Upon giving notice to Residents, Operator may change (or discontinue) any Services and rates to the extent not prohibited by Laws and Regulations (as defined in Section 10.3). Operator will individually bill Residents for the Services, taxes, franchise fees, and other fees assessed in conjunction with the Services. All Services are subject to availability at the Property.

- (A) Internet Access Service.** Subject to availability at the Property, Operator will offer Internet access service over the System ("Internet Access Service") to Owner and Residents. The Multi-Channel Video Services

does not include Internet Access Service that shall be offered on a non-exclusive basis. Internet Access Service is collectively referred to as the "Additional Services".

- (B) **Additional Services.** Operator may offer Additional Services to Owner and Residents on a non-exclusive basis. "Additional Services" includes Internet Access Service and means any services other than the Multi-Channel Video Services that can be provided to the Property over the System.

- 1.2 **Installation of System (as Applicable)** To the extent necessary (e.g., there is no, or there is insufficient, existing wiring and facilities, or the existing wiring and facilities are owned, or otherwise controlled, by a third party) and at no charge to Owner, Operator will design, construct, install and/or upgrade the System in accordance with industry standards, Laws and Regulations, and a construction plan and schedule agreed upon by Owner and Operator. "System" means all equipment, facilities, internal and external wiring, conduit, and molding that Operator installs or upgrades on the Property or that exist and Operator is allowed to use on the date of this Agreement and that Operator uses to deliver the Services. Upon completion of construction, Operator will repair and restore all portions of the Property damaged by Operator to its condition immediately prior to such construction.
- 1.3 **Maintenance of System.** Operator agrees to provide to the Premises Multi-Channel Video Services, and Additional Services, that are reasonably competitive and generally comparable with the services being offered by Operator or by another franchised Cable Television provider to the majority of other apartment communities within Hillsborough County and which Operator or another franchised Cable Television provider serves, with the objective that the Owner is not at a competitive disadvantage with similar properties. In the event that, through no act or omission of the Owner, Owner believes that the Multi-Channel Video Services, and Additional Services provided by Operator are not reasonably competitive or generally comparable to similar services being provided by another franchised Cable Television provider to the majority of other apartment communities in Hillsborough County, Florida, and as a result Owner is at a competitive disadvantage with similar properties, then Owner shall give Operator written notice describing how the Multi-Channel Video Services, and Additional Services, provided by Operator is not reasonably competitive or generally comparable. Operator shall have thirty (30) days to respond to Owner disputing Owner's claim or with a proposal to make the Multi-Channel Video Services, and Additional Services reasonably competitive and to implement same within ninety (90) days, unless more time is reasonably required due to circumstances beyond the reasonable control of Operator, and so long as Operator diligently proceeds to implement such proposal.

2. Ownership and Use of System during Term of Agreement.

During the term of this Agreement, Operator will own and have the exclusive right to access, control and operate the System, unless Owner paid for such equipment, facilities, conduit or wiring to be installed, or such equipment, facilities, conduit or wiring is owned by a third party, in which case (as between Owner and Operator), Owner shall own such items and Owner hereby grants to operator the exclusive right to access and use such items during the term of this Agreement. Owner shall not permit any part of the System to be interfered with or used by any third party. The System will not be deemed to be affixed to or a fixture of the Property. Owner shall not access, operate, or move the System during the term of this Agreement. Owner will provide the power necessary to operate any of Operator's equipment that is located on the Property.

Owner's Basic Obligations; Grant of Easement and Other Rights.

- 2.1 **Easement.** In consideration of the covenants and agreements in this Agreement, for \$10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby grants to Operator, its successors and assigns, a non-exclusive easement on the Property and all its improvements for the purposes of permitting Operator, its affiliates and contractors to design, construct, install, operate, maintain, market, upgrade, repair, replace, and remove the System and to provide Services. Operator will have and hold the easement, together with every right and appurtenance connected to it, for the term of this Agreement and for so long thereafter as Operator is providing services to the Property under this Agreement. When that period expires, this easement will terminate after an additional 90-day continuation period solely for the purpose of allowing Operator to remove its System. Owner, its successors and assigns hereby agree to warrant and forever defend the easement to Operator--as well as its successors and assigns--against every person who claims any part of it. This easement and other rights granted to Operator run with the title to the Property and are binding on Owner and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property. Operator may record this Agreement at any time.

- 2.2 Grant of Other Rights.** Owner acknowledges that Operator will spend substantial time, resources, and money in meeting its obligations under this Agreement and that Operator is relying on Owner's covenants in this Agreement in order to recoup its investment by providing the Services to the Property and by collecting revenues from Residents. Owner hereby grants to Operator (A) the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video services ("Marketed Services"), (B) the exclusive right to install, occupy, maintain, and remove the molding and other conduit housing the wiring of the System without alteration by Owner or third parties, (C) the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to offer and provide Multi-Channel Video Services the Marketed Services to Residents, (D) the exclusive right for the Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to market the Marketed Services to Residents, and (E) the non-exclusive right to market, offer and provide all other Services to Residents at the Property. During any applicable exclusivity period, Owner shall not, and Owner shall not permit other parties (including other service providers) to (i) promote, market, solicit for or sell services that compete with Operator's multi-channel video cable television services at the Property (including, but not limited to, the provision of such services on a bulk basis), (ii) take any action (or make any omission), directly or indirectly, that is designed to or has the effect of encouraging or facilitating Residents to choose another provider's services that compete with Operator's multi-channel video cable television services, or (iii) install additional equipment or facilities or upgrade existing equipment or facilities to enable such other provider to provide services that compete with Operator's multi-channel video cable television services. Where Laws and Regulations prohibit Owner from granting or Operator from obtaining exclusive rights under this Section 2.2, then such rights automatically shall become non-exclusive to the extent and only for so long as required by Laws and Regulations.
- 3. Term.** Owner hereby grants Bright House Networks a Fifteen (15) year exclusive right to enter the Premises and provide any or all Services to residents of the Premises ("Right of Entry Term"). The Right of Entry Term shall commence on the date this agreement is fully executed by both parties. The Right of Entry Term shall be automatically renewed for successive (1) year terms thereafter, unless Owner or Bright House Networks gives written notice to the other party of its intention not to renew at least 90 days prior to expiration of the initial or any renewal term. Charges for Services during the Right of Entry Term shall be set by Bright House Networks and shall be billed to individual residents of the Premises. In the event a resident of the Premises has contracted with Bright House Networks for Services and is delinquent in payment to Bright House Networks, Owner shall cooperate in recovering any of Bright House Networks' equipment from the unit of such resident
- 4. Owner's Representations and Warranties.** Owner represents and warrants that (A) Owner is the owner in fee simple of the Property, no purchase contracts exist with respect to the Property, and the legal description attached to this Agreement is the complete, accurate and current legal description for the Property; (B) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (C) Owner has the full power and authority to negotiate, execute, deliver and perform this Agreement and that the signatory below has been authorized to execute and deliver this Agreement; (D) Owner owns and/or has the right to grant to Operator hereunder the exclusive right to use all parts of the System not owned by Operator (including any third party wiring, molding or components, if any); and (E) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this Agreement.
- 5. Breach of Agreement.** If a party breaches any term of this Agreement and fails to cure such breach within 30 days after receiving notice from the non-breaching party reasonably detailing the breach, then the non-breaching party may terminate this Agreement, bring an action against the breaching party for damages; or seek any other available legal or equitable remedy.
- 6. No Warranties; Limitation of Liability.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED--REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. Neither party shall be liable to the other or to any third party for any indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of service, rent, profits or business opportunities. Notwithstanding the

foregoing, Operator shall be entitled to seek and obtain, as direct damages, lost revenues for Service to the Property for Owner's breach of or default under this Agreement. Notwithstanding anything above, Operator agrees to comply with Section 1.3 of this Agreement and to maintain the System at it's sole expense

7. Indemnity.

7.1 From Operator. Operator will indemnify, defend and hold harmless Owner and, as applicable, Owner's shareholders, members, partners, directors, managers, officers, employees, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its Related Parties that result from Operator's design, construction, installation, operation, or maintenance of the System or provision of Services.

7.2 From Owner. Owner will indemnify and hold harmless Operator and Operator's Related Parties from and against all Losses incurred by Operator or its Related Parties that result from (A) damage to any part of the System caused by the gross negligence of the Owner, its employees or agents, or any third party that has entered the Property with Owner's permission, (B) any claim arising out of Owner's operation of the Property, and (D) Owner's breach of its representations and warranties in Article 5 or its covenants in Section 3.

8. Ownership and Removal of System after Termination or Expiration; Mandatory Access Laws and Regulations.

8.1 Ownership and Removal of System after Termination or Expiration. Subject to Laws and Regulations, after this Agreement has expired or been terminated, Operator shall remove any of the above ground equipment, but leave any of the underground components, of the Services Delivery System, and remove any of the other properties placed on the Premises by Operator within a period of 90-days following the termination of this agreement. If Operator damages the Premises when it removes the Services Delivery System or any of its other properties from the Premises, Operator will repair and restore such damage. If any of the Services Delivery System or other property of Operator is not removed from the premises, then Operator will continue to own such property so long as it holds a franchise to provide cable service in the jurisdiction where the Premises are located, and thus has a reasonable expectation that it may again become authorized to deliver its services to residents of the Premises. If Operator so elects, it may lease any portion of the Services Delivery System to Owner or any other party following expiration of this Agreement pursuant to such terms and conditions as may be agreed to by such parties. Operator and Owner agree that any use by Owner or any third party of the Services Delivery System or any other property of Operator located on the Premises, whether with or without the consent of Operator, shall not disturb Operator's continued right to ownership of any such property. Owner shall provide Operator access to the Premise's electrical system.

8.2 Mandatory Access Laws and Regulations. Notwithstanding anything to the contrary in this Article 9 or the Agreement, if Laws and Regulations require Owner to provide Operator with access to the Property for the provision of any service, then Operator shall (A) continue to own and be permitted to access and use all wiring and other components of the System, for so long as permitted by Laws and Regulations, to provide service to the Property and (B) have the right to remove, abandon, disable, or sell such wiring and other components of the System within 90 days after Operator no longer is permitted by Laws and Regulations to provide such services.

9. Miscellaneous Provisions.

9.1 Notices. All notices, requests, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this Agreement. Such notice shall be effective, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

9.2 Force Majeure. Despite anything to the contrary in this Agreement, neither party will be liable or in default under this Agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the nonperforming party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; severe weather,

earthquakes, or floods; fires or explosions; governmental action or regulation; strikes, lockouts, or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. The time for performance of a party hereunder shall be extended commensurate with the duration of the Force Majeure Event.

- 9.3 Compliance with Laws and Regulations; Choice of Law.** This Agreement shall be subject to, and in the performance of their respective obligations under this Agreement the parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasi-governmental and regulatory authorities with jurisdiction over the parties), and, with respect to Operator only, the requirements of Operator's franchise agreement for the Area (collectively, "Laws and Regulations"). Nothing in this Agreement shall prohibit Operator from fully complying with all Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the Federal Communications Commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this Agreement. This Agreement is governed by and shall be interpreted under the laws of the state in which the Property is located, without regard to its choice-of-law provisions.
- 9.4 Severability and Replacement of Unenforceable Provisions.** If any portion of this Agreement is rendered invalid or otherwise unenforceable under Laws and Regulations or by a governmental, legal or regulatory authority with jurisdiction over the parties, then the remainder of this Agreement will continue in full force unless such continuance will deprive one of the parties of a material benefit hereunder or frustrate the main purpose(s) of this Agreement. In such event, the party that has been deprived of such material benefit ("Affected Party") may notify the other, and the parties promptly thereafter shall use their reasonable best efforts to replace or modify the invalid or unenforceable provision with a provision that, to the extent not prohibited by Laws and Regulations, achieves the purposes intended under the invalid or unenforceable provision. If the parties are unable to reach agreement on replacement or modification of the invalid or unenforceable provision within 60 days after notification from the Affected Party, then the Affected Party may terminate this Agreement upon 60 days notice.
- 9.5 Modification; Waiver; Scope of Agreement; Assignment.** This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supersedes all other agreements relating to, the subject matter contained herein. This Agreement can be modified or changed only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this Agreement will be effective only if in writing. This Agreement shall be freely assignable by either party.
- 9.6 Enforcement Costs.** If either party sues or brings any other type of enforcement action in connection with this Agreement, then the prevailing party shall be entitled to seek to recover its reasonable attorneys' fees and other costs in connection with such action.
- 9.7 Survival.** The terms of Articles 3, 7, 8, 9, and 10 will survive the expiration or termination of this Agreement for any reason.
- 9.8 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original.
- 9.9 No Conflicts.** Owner represents to Operator that there are no agreements or other instruments that conflict with, or otherwise prohibit or inhibit Operator from installing the System on the Property and providing the Services, and that Operator's action of installing the System on the Property is not in conflict in anyway with any agreements that Owner may have with any other party. Owner shall defend Operator from any claims or actions arising out of Operator's installation of the System or from Operator's provision of the Services or Additional Services.
- 9.10 Consideration.** As consideration for the rights and privileges granted to Operator by Owner under this Agreement, including the exclusive rights granted by Owner to Operator, Operator shall pay to Owner an access fee in the amount of two hundred (\$200) dollars per unit for a total of 194 units. This Consideration shall be paid within 90 days of the date that this Agreement is fully and properly executed by both parties and only if Owner provides Operator with a properly completed and valid W-9 form, and provides same within 45 days of the date that this agreement executed by both parties. Operator shall not be required to provide the Consideration, or shall otherwise be entitled to a complete and full refund of the Consideration paid by Owner, if the Owner is in breach of this Agreement.

- 9.11 Courtesy Accounts.** Operator shall provide to Owner a total of two (2) Courtesy Accounts consisting of Owner's Standard Cable service (about 68 channels) to locations that are reasonably accessible to Owner, and that are locations on the Property such as a club house, office, or on-site resident manager's residence or other employee of Owner.
- 10. Confidential Information; Announcements.** Except as specifically provided in this Agreement, and except for disclosures required by Laws and Regulations and prospective buyers of the Owner, Owner and Operator will (A) keep this Agreement and its terms confidential, (B) keep confidential any information that is provided by one party to the other and that is marked as confidential, (C) not use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval.

**Pinecrest Village, LLC a Florida
Limited Liability Corp**

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)

) ss:

County of _____)

This instrument was acknowledged
before me by _____ as the _____
of _____, on the
_____ day of _____,
2006.

Witness my hand and official seal.

Notary Public

[SEAL]

My commission expires: _____

Bright House Networks, LLC

Date: _____

By: _____

David C. Ross

Title: Vice President of Commercial Markets

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)

) ss:

County of _____)

This instrument was acknowledged
before me by **David C. Ross** as the **Vice
President of Commercial Markets of
Bright House Networks, LLC**, on the ____
day of _____, 2006.

Witness my hand and official seal.

Notary Public

[SEAL]

My commission expires: _____

Exhibit A
Legal Description of the Property

Attached.

**Easement and Memorandum of
Agreement**

Grant of Easement

In consideration of \$10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Pinecrest Village, LLC a Florida Limited Liability Corp ("Grantor") grants to Bright House Networks, LLC ("Grantee"), its successors and assigns, a non-exclusive easement on Grantor's property and all its improvements (as described in the attached Exhibit A) (the "Property"). This easement is for the purposes of permitting Grantee and its affiliates and contractors to design, construct, install, operate, market, maintain, upgrade, repair, replace, and remove a system (including internal and external wiring, poles, conduits, molding, pipes, antennas, servers, switch equipment, software, central processing units and other facilities and equipment ("System") for the delivery of cable television, entertainment, video, internet access, and other services that may be delivered over the System to the Property, as more fully provided in the Easement, Installation and Service Agreement between Grantor and Grantee with respect to the Property (the "Agreement"). During the term of the Agreement and this Easement, Grantee shall own, and Grantee shall have the exclusive right to access, control and operate, the System, and the System shall not be deemed to be affixed to or a fixture of the Property. Ownership and removal of the System after the expiration of the Agreement and this Easement shall be pursuant to the Agreement. Grantor will also provide reasonable space for Grantee's equipment.

Grantor reserves the right to grant other easements on the Property, but will not allow such other easements to cause unreasonable interference with the easement granted to Grantee herein.

Grantee will have and hold the easement, together with every right and appurtenance connected to it, for an initial term of 15 years and 90 days, or for so long as Operator is allowed to have its System on the Property pursuant to the Agreement. Grantor, its successors and assigns hereby agree to warrant and forever defend the easement to Grantee--as well as its successors and assigns--against every person who claims any part of it.

This easement shall not amend, modify, terminate, release or discharge any party from its rights or obligations under any other written easement with respect to the Property. If Grantee currently has the right to serve the Property under any other written easement, then such other easement shall survive this easement and shall continue to bind the parties in accordance with its terms; provided, however, that in the event of any conflict between the terms of any such other easement and this easement during the term hereof, this easement shall control.

This easement and other rights granted to Grantee run with the title to the Property and are binding on Grantor and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property.

11. Memorandum of Agreement

In addition to the rights granted above, the Agreement grants to Grantee certain exclusive rights to market and provide Multi-Channel Video Services, and certain non-exclusive rights to provide Internet Access Service and Additional Services to Grantor and to residents of the Property.

[DATE, SIGNATURE, AND NOTARIZATION ON FOLLOWING PAGE]

**Pinecrest Village, LLC a Florida
Limited Liability Corp**

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)

) ss:

County of _____)

This instrument was acknowledged
before me by _____ as the _____
of _____ on the
_____ day of _____,
2006.

Witness my hand and official seal.

Notary Public

[SEAL]

My commission expires: _____

Bright House Networks, LLC

Date: _____

By: _____

David C. Ross

Title: **Vice President of Commercial Markets**

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)

) ss:

County of _____)

This instrument was acknowledged
before me by **David C. Ross** as the **Vice
President of Commercial Markets of
Bright House Networks, LLC**, on the _____
day of _____, 2006.

Witness my hand and official seal.

Notary Public

[SEAL]

My commission expires: _____

ATTACHMENT 7



20 West Gude Drive
Rockville, MD 20850

Comcast Cablevision of Potomac, LLC

Services Agreement

THIS SERVICE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 200____, by and between Comcast Cablevision of Potomac, LLC, a Delaware Company (the "Company"), whose address is 20 West Gude Drive, Rockville, MD 20850 and _____ (the "Owner") who owns or has control over certain real estate and improvements thereon located at _____ (the "Premises"), consisting of _____ residential units.

The Company has been granted by the county of Montgomery, Maryland and the City of Gaithersburg, Maryland, franchises to construct and operate a cable communications system throughout the County. The Owner desires to provide cable communications services to the Premises, including, but not limited to, cable television service (the "Services") and the Company is willing to maintain and operate a cable communications system for such purposes on the Premises in accordance with the terms and conditions below.

NOW, THEREFORE, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. The System. The Company has installed all facilities necessary to transmit the Services to the Premises (the "System"). The ownership of all parts of the System installed by the Company shall be and will remain the personal property of the Company. At no time during or after the term hereof shall the Owner or any third party have the right to use the System or any portion thereof for any purpose.
2. Access. The Owner will allow Company employees to enter all common areas of the Premises for the purposes of auditing, selling or disconnecting service, installing, maintaining, repairing, replacing or removing equipment and apparatus connected with the provision of the Services and will use reasonable efforts to assure the Company access to any parts of the Premises over which it does not have control for the same purposes. Owner will supply the names and unit numbers of residents at reasonable intervals. Owner shall cooperate with the Company to prevent (i) the unauthorized possession of converters or channel selectors and (ii) the unauthorized reception of the Services.
3. Delivery of Services. The Owner has the authority to grant and does hereby grant to the Company during the term hereof the exclusive right and license to construct, install operate and maintain multi-channel video distribution facilities on the Premises (whether by cable, satellite, microwave or otherwise) and to deliver the Services to the Premises, unless otherwise required by applicable law.

4. Fees and Charges for Services. The terms, conditions, charges and fees for the Services provided to residents at the Premises shall be contained in contracts between the Company and individual residents. The Owner assumes no liability or responsibility for service charges contracted for by residents. All billing and collections from residents will be accomplished by the Company.

5. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. The Company will maintain a local or toll-free telephone number which will be available to its subscribers 24 hours a day, seven days a week. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

6. Interference. Neither the Owner nor anyone operating on its behalf will tap or otherwise interfere with the System for any purposes. Notwithstanding anything else in this Agreement to the contrary, the Company shall not interfere with the right of an individual resident to install or use his own private reception device, provided, however, that should any device or any facility belonging to a resident (or Owner) not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue service to the Premises, or, at the Company's discretion, the individual unit, until such non-conformance is cured by the Owner or resident as the case may be.

7. Term. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Owner and the Company and their respective successors and assigns for a term of ten (10) years. This Agreement shall automatically renew for successive periods of two (2) years unless either party shall provide the other with a minimum sixty (60) days notice of its intention not to renew at the end of the then current term.

8. Marketing Launch Fee. As further consideration for the Owner's exclusive Marketing Support for the Company's Services delivered to the Premises during the term of the Agreement, the Company agrees to pay Owner, within forty-five (45) days following the execution of the Agreement a certain fee (the "Marketing Launch Fee") equal to the total number of dwelling units on the Premises as specified in Paragraph 1 of the Agreement multiplied by seventy-five dollars (\$ 75). In the event that the Owner permits another multi-channel video service provider to offer multi-channel video services to the Premises during the term of the Agreement, the Owner will refund to the Company a portion of the Marketing Launch Fee based on the following formula: number of years remaining in the term of the Agreement (rounded to the nearest year) times seventy-five dollars (\$ 75) times the number of dwelling units.

9. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Owner with a certificate evidencing such insurance.

10. Indemnification. The Company shall indemnify, defend and hold the Owner harmless from any and all claims, damage or expense arising out of the actions or omissions of the Company, its agents and employees with respect to the installation, operation, maintenance or removal of the System and the Services provided to residents at the Premises pursuant to this Agreement. The Owner shall indemnify, defend and hold the Company harmless from any and all claims, damage or expense arising out of the actions or omissions of the Owner, its agents and employees. In no event shall either Owner or the Company be liable for any consequential, indirect, incidental, special or punitive damages whatsoever.

11. Termination.

- a. Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event the default is not cured, or a cure is not commenced, within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.
- b. Loss of Franchise. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company's franchise with the Franchise Authority or any renewal thereof ceases to be in effect.

12. Removal of System. Upon termination of this Agreement for any reason, the Company shall have a period of six (6) months in which it shall be entitled but not required to remove the System, including the cable home wiring and cable home run wiring. The Company shall promptly repair any damage to the Premises occasioned by such removal.

13. Dispute Resolution. All disputes under this Agreement shall be submitted to, and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with multi-channel video program distribution systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with multi-channel video program distribution systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party, all costs of the arbitration, including reasonable attorneys' fees.

14. Miscellaneous.

- a. Force Majeure. The Company shall not be liable for failure to construct or to continue to operate the System during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.
- b. Assignability; Binding Effect. This Agreement may be assigned by either party. The assignee shall agree in writing to be bound by all the terms and conditions hereof. In the event the Owner sells, assigns, transfers or otherwise conveys the Premises to a third party, the Owner shall give the Company prior written notice of such change of ownership or control. Owner shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. This Agreement shall be binding upon the parties and their respective successors and assigns.
- c. Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.
- d. Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.
- e. Recording. The Company may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.
- f. Notices. Whenever notice is provided for herein, such notice shall be given in writing and shall be hand delivered, sent by certified mail, return receipt requested, or sent via overnight courier to the address set forth in the first paragraph of this Agreement or to such other address as may subsequently in writing be requested.
- g. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.
- h. Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

WITNESS/ATTEST:

OWNER: _____

By: _____

Name:

Title:

ATTEST:

COMCAST CABLEVISION
OF POTOMAC, LLC

By: _____

Name: Susan L. Reinhold

Title: Vice President and General Manager

ATTACHMENT 8

PSL

**Comcast Cablevision of Maryland, Inc.
Cable Installation and Service Agreement**

THIS SERVICE AGREEMENT (the "Agreement") is made and entered into this ____ day of June, 2002, by and between Comcast Cablevision of Maryland, Inc., a Colorado Corporation (the "Company"), whose address is 9609 Annapolis Road, Lanham, MD 20706 and Municipal Capital Appreciation Partners I, LLC (the "Owner") who owns or has control over certain real estate and improvements known as Cherry Branch Apartments thereon located at 8800 Cherry Lane, Laurel, Maryland, 20708 (the "Premises"), consisting of 172 residential dwelling units (the "Units").

The Company has been granted by the Prince Georges County, Maryland and the City of Laurel, Maryland, franchises to construct and operate a cable communications system throughout the County. The Owner desires to provide cable communications services to the Premises, including, but not limited to, cable television service (the "Services") and the Company is willing to maintain and operate a cable communications system for such purposes on the Premises in accordance with the terms and conditions below.

NOW, THEREFORE, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. The Owner grants the Company the right to install all facilities necessary to transmit cable television and other broadband communications to the Premises. All work shall be done by the Company in a proper and workmanlike manner in accordance with industry standards, local codes and Company's specifications. The Company shall pay all costs and expenses incurred by it in installation and maintenance of the System. The Company agrees to repair promptly on demand and/or replace any damage to the Premises resulting from the installation, operation or removal of the System. The Company shall submit to Owner plans and specifications for review and approval at least fifteen (15) days prior to the scheduled commencement of any proposed construction; no construction shall begin until the Company has received prior written approval from Owner, which shall not be unreasonably withheld and which shall be subject to the limits set forth in the Grant of Easement attached hereto as Exhibit B.

2. The ownership of all parts of the System, installed upon the Premises by the Company, including but not limited to all cables, wires, equipment and appurtenant devices shall be and will remain the personal property of the Company in accordance with the applicable provisions of Title 47 of the Code of Federal Regulations and shall not be considered a fixture of the Premises except as provided in this Paragraph 2 and in Paragraph 9 below. Upon termination of this Agreement the Company shall elect to abandon to Owner the ownership of all Home Run Wiring owned or installed by the Company upon the Premises in accordance with Section 76.804 of the Regulations. Except as provided in this Paragraph 2 and/ or Paragraph 9 below, or elsewhere provided in this Agreement, at no time during or after the term hereof will Owner or any third party have the right to use the System or any portion thereof for any purpose.

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3. The Company shall indemnify and defend the Owner and hold the Owner harmless from and against any and all claims, demands, costs, expenses, damages, liabilities and losses, including reasonable attorneys fees arising out of, from, or in connection with the (a) the entry upon the Premises or any Unit at the Premises by the Company and /or its employees and independent contractors and agents, (b) actions or omissions of the Company and /or its agents, independent contractors and employees with respect to the installation, operation, maintenance or removal of equipment installed pursuant to this Agreement including environmental hazards associated with the equipment (c) any failure to deliver or agree to deliver, or the cancellation of any agreement to deliver any cable television services to any tenant or subtenant at the Premises, and (d) any billing and collection actions, efforts and procedures of the Company, its employees, with respect to any tenant or subtenant at the Premises and (e) any claim by a resident or other third party with standing to assert a claim challenging the exclusivity provision of this agreement, excluding any claim: 1) arising out of the use or desire to use any multi-channel video service transmitted or delivered to the property via microwave, satellite or existing telephone or electrical lines; 2) the use or desire to use any multi-channel video service delivered without making use of owner's private property; 3) the use or desire to use any multi-channel video service which can be delivered without the necessity of owner's approval; 4) the use or desire to use the facilities of a third party within the boundaries of a residential leasehold; or 5) the use, desire to use, or delivery of a any multi-channel video service pursuant to any future law, regulation or ordinance applicable to the property. Notwithstanding the foregoing, Owner shall notify Comcast promptly of any such a claim and Comcast shall have the right to waive the exclusivity provisions hereof. If granted, such waiver shall constitute owner's sole right and remedy under this provision. The Owner agrees that it will not interfere with the Company's performance under this Agreement and that it will indemnify and defend Company and hold Company harmless from any and all claims, damage or expense arising out of the actions or omissions of Owner or any other party under Owner's control. The foregoing provision excludes residents and is limited to agents and employees of Owner

4. The Owner has the authority to grant and does hereby grant to the Company during the term here of, to the extent permitted by law, the exclusive right and license to operate cable television and broadband communication and distribution facilities on the Premises (whether by cable, satellite, microwave or otherwise) including the right to construct, install, maintain, repair, replace and remove all necessary equipment and appurtenant devices subject to the obtaining of consent by its Mortgagee. The Owner has the authority to grant an easement as set out in Exhibit B, in favor of the Company to place its lines across the Premises binding any subsequent Owner. The rights hereby granted to the Company shall not preclude the Owner from entering into any agreement granting any telephone system operator the exclusive right to install a telephone system at the Premises or to otherwise provide telephone services at the Premises, including but not limited to the provision of computer modem and related or similar services over telephone lines. The Company shall obtain Owner's prior approval of the location of each such installation, which approval shall not be unreasonably withheld or delayed, but may be reasonably conditioned by Owner with respect to any physical or visual impact of the installation and its compatibility with the building.

5. The Owner, after receiving notification, will allow Company employees to enter all common areas of the Premises for the purpose of auditing, maintaining, repairing, or removing equipment and apparatus connected with the provision of services hereunder and will

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take all steps necessary to assure the Company access to any parts of the Premises over which it does not have control for the same purposes.

6. If either party brings legal action for the enforcement of this Agreement then the prevailing party shall be entitled to recover from the losing party its reasonable attorney's fees

7. Company agrees to carry at its own expense, personal injury and property liability insurance against claims for bodily injury, death, or property damage, occurring in or about the Premises (arising from any omission, fault, negligence or other misconduct of the Company), during the term of this Agreement covering the Company and Owner as insured with a company licensed to do business in the State of Maryland, having a Best's Insurance Guide rating of A-IV or better, with terms and conditions reasonably satisfactory to Owner for limits not less than Two Million (\$2,000,000.00) Dollars combined single limit and providing that Company and Owner shall be given a minimum of 30 days written notice by the insurance Company prior to cancellation, termination or change in such insurance. Company shall provide Owner, prior to commencing any construction work upon the Premises, and from time to time thereafter upon Owner's written request, with copies of certificates evidencing that such insurance is in full force and effect and stating the terms thereof and reflecting Owner as an additional insured. The Company's obligation to indemnify, defend and hold Owner harmless shall not be affected by the invalidity or inapplicability of any insurance required under this Paragraph 7

8. Neither the Owner nor anyone operating on his/her behalf will tap or otherwise interfere with the cable distribution lines for any purposes. Notwithstanding the provisions of paragraph four (4), the Company shall not interfere with the right of an individual resident to install or use their private reception device located in resident's unit for the reception of locally broadcast or satellite transmitted television signals, provided however that should any device or any facility belonging to Owner or a resident not comply with technical specifications established by the FCC, including but not limited to signal leakage, the Company reserves the right to discontinue service to the Premises or residence until such non-conformance is cured by the Owner or resident as the case may be. The previous sentence notwithstanding, Owner shall not install a new or improve an existing master antenna system on the Premises.

9. Removal of the Company's equipment after termination of this Agreement shall be governed by this Paragraph 9. (1) Upon termination of this Agreement by the Company, for cause or by Owner, without cause, and any and all easements and licenses granted pursuant to this Agreement and a Termination of Easement attached hereto as Exhibit B, the Company shall have a period of sixty (60) days following such termination in which it shall be entitled (subject to Paragraph 2 with respect to Home Run Wiring) to remove its equipment, electronics, and wiring (other than Home Run Wiring) provided further that the Company shall promptly record in the Prince Georges County Records Office a memorandum of Termination and shall promptly repair any damage to the Premises caused by such removal. In the event any of the Company's equipment has not been removed within said sixty (60) days, all such remaining equipment shall be deemed abandoned by the Company and Owner shall have the right to keep any or all of such abandoned equipment and to have and exercise all ownership rights with respect thereto, including but not limited to the right to assign, transfer and convey such equipment to any other person or entity by bill of sale free and clear of all liens (and

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Company shall be responsible for the discharge and removal of all liens thereon arising during, out of, from or in connection with the Company's prior ownership thereof).

(2) Upon termination of this Agreement by the Company, without cause, or by Owner, the Company shall then record, in the Prince Georges County Recorders Office, a Memorandum of the termination of this Agreement and any and all easements and licenses granted pursuant to this Agreement and a Termination of Easement attached hereto as Exhibit B, and the Company shall have a period of thirty (30) days following such termination in which it shall be entitled (subject to Paragraph 2 with respect to Home Run Wiring) to remove its equipment, electronics, and wiring (other than Home Run Wiring) provided further that the Company promptly repairs any damage to the Premises caused by such removal. In the event any of the Company's equipment has not been removed within said thirty (30) days, all such remaining equipment shall be deemed abandoned by the Company and Owner shall have the right to (a) remove any or all of such equipment at Owner's expense, (b) to keep any or all of such abandoned equipment and to have and exercise all ownership rights with respect thereto, including but not limited to the right to assign, transfer and convey such equipment to any other person or entity by bill of sale free and clear of all liens (and Company shall be responsible for the discharge and removal of all liens thereon arising during, out of, from or in connection with the Company's prior ownership thereof) (3) Company shall comply with the applicable laws, including but not limited to, all FCC guidelines and regulations regarding removal and repair of equipment, electronics, and wiring, including but not limited to Section 76.804 of the Regulations (provided however, that as provided to Paragraph 2 above, the Company shall elect, under said Section 76.804 to abandon the Home Run Wiring). (4) If Owner sells the Premises to a third party and the new Owner does not elect to assume this Agreement, the Owner may elect to pay Company a "Buy Out Fee" (as defined below) which allows the Owner to terminate this Agreement and acquire from Company all inside wiring at the Property. The amount of the Buy Out Fee for the inside wiring and termination shall be \$2.90 per residential unit multiplied by each month remaining on the original term of this Agreement. As an example, if the Owner sold in year 4 of the Agreement, the Buy Out Fee would be calculated as the number of units multiplied by \$2.90 each multiplied by the remaining 48 months on the original term ($172 \times \$2.90 = \$498.80 \times 48 = \$23,942.40$). Upon Company's receipt of the Buy Out Fee, the Agreement shall be deemed terminated and title to the inside wiring shall transfer to Owner free and clear of all liens and encumbrances.

10. The Company shall not be liable to Owner, for damages for failure to construct or to continue to operate the System, and the sole remedy of Owner, or those claiming through or under Owner, for any such failure, shall be to terminate this Agreement if such failure is not remedied, or diligently attempted to be remedied, by the Company within thirty (30) days following receipt of written notice thereof from Owner. Company shall indemnify Owner for any third party claims resulting from damages for failure to construct or continue to operate the System.

11. The terms, conditions and charges for cable service provided to the Premises shall be contained in contracts between the Company and residents. The Owner assumes no liability

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or responsibility for service charges contracted by the residents. All billing and collections from residents will be accomplished by the Company. The Company will provide and maintain a level of service consistent with the terms of its franchise granted by the County.

12. In exchange for the Owner's exclusive marketing support, Owner shall receive from the Company a marketing support fee in accordance with Exhibit A attached to and made part of this Agreement.

13. This Agreement including Exhibits A and B attached hereto constitutes the sole and entire agreement between the parties and shall not be modified, amended, supplemented or revised except in writing duly executed by both parties hereto.

14. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Owner and the Company and their respective successors and assigns for a term of eight (8) years. Notwithstanding the foregoing, this Agreement shall terminate without liability in the event of the earlier termination of Company's (or its assignee's) rights to operate a cable television system within the County. Upon any such expiration of the term of this Agreement, then unless either party has given the other written notice not less than sixty (60) days prior to such expiration to the contrary, the term shall be automatically extended until the earlier of (a) the date that is one year (1) following such initial termination date or (b) the date that is sixty days following any written notice from Owner to the Company or the Company to Owner, of the termination of this Agreement.

15. The Company shall not be liable for failure to construct or continue to operate the System during the term hereof due to Acts of God, the failure of equipment or facilities not belonging to Company, denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulations or any other circumstances beyond its reasonable control of the company and likewise, Owner shall not be liable to Company for any failure beyond its control.

16. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns. This Agreement may be freely assigned by either party, and upon such assignment, the assignee shall be bound by all the terms and provisions of this Agreement. Any assignment by Owner shall relieve the assigning Owner of all liability hereunder arising from and after such assignment. Any assignment by the Company shall not relieve the Company the assigning Company of any liability hereunder whether arising prior to or from and after such assignment, unless the transferee (a) assumes, in writing, all of the Company's obligations hereunder and a copy of such written assumption is delivered to Owner, (b) is a cable operator authorized and franchised to operate a cable television system in Prince Georges County, Maryland, offering substantially the same (or greater) services as the transferor immediately prior to such transfer, and (c) has sufficient equipment, staff and the economic means to operate such cable television service upon such transfer. Owner will notify Company before any assignment becomes effective, and will ensure that any party to whom an ownership interest in the Premises is transferred expressly assumes the obligations of this Agreement, subject to section 9, paragraph (4) of this Agreement. The Company will notify Owner before any assignment becomes effective if such disclosure can be made without violation of any applicable state federal securities laws, regulations, rules and ordinances, and will ensure that

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any party to whom the Company's interests in this Agreement is transferred expressly assumes the obligations of the Company under this Agreement. The preceding notification requirement shall not apply to transfer of ownership interests by a natural person, either during his or her lifetime or at death, to his or her spouse, parents, lineal descendants or the spouses of lineal descendants, outright or in trust nor shall it apply to any transfer of any interest as a limited or general partner of Owner.

17. Owner warrants the person executing this Agreement on behalf of Owner is fully authorized to grant to Company the terms and conditions provided herein, or the duly authorized agent of Owner who has the lawful right and capacity to enter into this Agreement.

18. Neither party will disclose any information contained in this Agreement, or information made available by one party to the other as part of compliance with this Agreement, except to persons who have a need to know pursuant to this Agreement. Both Parties will use the same standard of care to protect such information received, as they would protect their own confidential and proprietary information.

19. Any notice required or to be made or given shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid addressed as follows:

Company: Comcast Cablevision of Maryland, Inc.
9609 Annapolis Road, Lanham, MD 20706
Attn: General Manager

Owner: Municipal Capital Appreciation Partners I, LLC
8800 Cherry Lane
Laurel, MD 20708

20. This Agreement and all easements and rights - of - way granted pursuant to this Agreement are hereby subordinated to the lien of all deeds of trust encumbering the Premises held by any institutional lender and the Company agrees to execute, acknowledge and deliver for recording, from time to time at the request of any beneficiary of such deed of trust ("Holder"), a formal subordination agreement in the form reasonably required by Holder provided that such subordination agreement also contains attornment and non-disturbance provisions to the general effect that upon any foreclosure of said deed of trust, the Company's rights under this Agreement will not be terminated or disturbed so long as the Company continues to timely perform all of its obligations under this Agreement, including but not limited to the payment of all sums due hereunder, including but not limited to the marketing support fee described in Paragraph 12 above, to the fee owner of the Premises and provided further that such fee owner agrees to assume the Owner's obligations under this Agreement arising from after such owner's acquisition of title, subject to section 9, paragraph (4) of this Agreement.

21. Any monetary obligation under this Agreement not paid within ten (10) days following the date upon which notice has been given that such

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obligation was not paid when due shall bear interest from such tenth (10th) day following such notice until it is fully paid at the rate of eight percent (8%) per annum.

22. The Company may record Exhibit B., Grant of Easement, attached to and made part of this Agreement, in the public records of the county in which the Premises are located. Neither party shall record this Agreement or Exhibit A.

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ATTACHMENT 9

CROUDACE & DIETRICH
ATTORNEYS AT LAW

5 Park Plaza, Suite 1150, Irvine, California 92614-8591
Telephone (949) 794-9900 Facsimile (949) 794-9909
E-Mail mark.nirikman@c2d2law.com

February 28, 2007

By Facsimile and Federal Express

Mr. Dan Padderud
Business Development Manager
Verizon Inc.
1521 Meadows Ave.
Lantana, TX 76226

Re: Telephone Service for Residential Developments in Murrieta, California

Dear Mr. Padderud,

As you are aware, we represent the owners of the three multi-family residential properties located in Murrieta, California, commonly known as Vista Point, Village Walk and Silverado (the "Properties"). With respect to each of the Properties, Verizon has requested a license agreement and a grant of easement to allow Verizon to install underground fiber optic cable and other equipment in connection with its provision of telephone services to the residents of the Properties.

With respect to the Village Walk property, Cameo Homes purported to execute an easement agreement and a license agreement in or about August 2006, but Verizon returned these documents (unsigned) to Cameo. As the agreements were never executed and delivered by Verizon, were not executed or delivered by Murrieta Villagewalk LP (the owner of the property), and the parties continued (and are continuing) to negotiate toward an acceptable service agreement as to this property and the other Properties (so that Verizon would have access rights from the owner, without reference to the purported easement or license agreements), such agreements are of no force or effect. Murrieta Villagewalk LP hereby expressly disavows any liability under the agreements, and to the extent Cameo had any authority to sign such agreements on its own behalf (which it did not), revokes any offer to enter into such agreements. With respect to the other two Properties, Verizon advises that it has laid or is in the process of laying fiber optic cable on and in our clients' property (notwithstanding that it had no agreement permitting it to do so). Accordingly, we need to finalize the Service Agreements that have been under negotiation for some time.

In that regard, our clients have advised Verizon that the property owners have entered into exclusive cable agreements with Time Warner Cable with respect to all three Properties. As a result, as our clients have repeatedly advised you, our clients cannot and will not permit Verizon to offer cable services to tenants residing at any of the three Properties. Nevertheless, we understand that Verizon has taken the position that it will not provide telephone service to any of the three Properties unless it also permitted to provide cable service to residents of the Properties. In fact, Verizon has contended that it is required to provide cable services to the Properties if requested to do so, as part of its bundle of services offered, notwithstanding the exclusive agreements with Time Warner Cable.

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ATTORNEYS AT LAW

February 28, 2007

Page 2

Verizon's position is both unreasonable and legally untenable. First, as Verizon certainly knows, it is an incumbent local exchange carrier and as such it simply has no legal right to refuse service to residential phone service to customers within its service area. Specifically, Public Utilities Commission General Order 96-A, Section XV, provides, "No public utility of a class specified herein shall, unless authority has been obtained from the Commission, either withdraw entirely from public service or withdraw from public service in any portion of the territory served." We have confirmed with a representative of the California Public Utilities Commission that Verizon cannot refuse to offer telephone service in the area or condition such offer on the consumer's willingness to purchase additional services.

Second, although Verizon may wish for marketing reasons to offer bundles of telephone, video and/or broadband services, it has no legal obligation to offer, much less to require, bundling as a precondition to offering telephone service. Unlike its telephone service, where it is the provider of last resort, it has no legal obligation to offer video cable services unless it agrees to do so by contract. In fact, the opposite is true. Section 3.1.1 of Verizon's cable franchise agreement with the City of Murrieta specifically exempts Verizon from the requirement that it offer cable services to residential customers, "in areas where developments or buildings are subject to claimed exclusive arrangements with other providers".

Third, Verizon's attempts to strong-arm its way into providing cable services for the Properties constitute unfair business practices and a wrongful interference with our clients' and Time Warner's contractual relations. Such interference simply cannot be tolerated.

Finally, Verizon has no legal right to connect to our clients' coaxial cable for the purpose of providing video service. Until and unless Verizon and our clients reach binding agreements with respect to the Properties, Verizon is not permitted to connect to the Properties for any service other than basic telephone service, and that will need to be provided pursuant to an agreed-upon Service Agreement (which we understand is nearly final, with the major remaining issue being Verizon's insistence on providing cable).

We trust that Verizon will refrain from further inappropriate conduct by attempting to require that our client allow Verizon to provide video services when prohibited by another contract, and instead will focus on completing the negotiations to reach acceptable access and service agreements for phone and internet service with our clients. To that end, I have attached a final form of Service Agreement that our clients are ready, willing and able to execute immediately upon Verizon's written approval of the same. We hope that this will allow both sides to move forward toward a productive relationship in the future. Please call me if you have any questions or comments.

Sincerely,



Mark A. Nitikman

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Enclosures

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ATTORNEYS AT LAW

February 28, 2007

Page 3

cc: Sarah E. Tippet, Esq., via Facsimile
Mr. Vic Mahoney, via Facsimile
Ms. Ginny Lussier, via Facsimile
Debra M. Dietrich, Esq. (internal)